EXHIBIT "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, LISA STEIN, AND
AUDREY HAYS,

Plaintiffs,

-vs-

LESTER EBER, ALEXBAY, LLC, F/K/A LESTER EBER, LLC,
ESTATE OF ELLIOT W. GUMAER, JR., AND WENDY EBER,

Defendants,

and

EBER BROTHERS & CO., INC., EBER BROS. WINE & LIQUOR
CORP., WINE & LIQUOR METRO, INC., EBER-CONNECTICUT, LLC,
EBER-RHODE ISLAND, LLC, EBER BROS. ACQUISITION CORP.,
EBER-METRO, LLC, SLOCUM & SONS OF MAINE, INC., AND
CANANDAIGUA NATIONAL BANK & TRUST COMPANY,

Nominal Defendants.

Deposition of FRANK TORCHIO, held pursuant to Article 31 of the Civil Practice Law and Rules, at Underberg and Kessler, 300 Bausch and Lomb Place, Rochester, New York, on the 23rd day of August, 2019, commencing at 9:30 a.m., before Leah Didsbury Reporter, Notary Public.

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Also Present: John Herbert (telephonically)
Patrick Martin

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COURT REPORTER: Do you want him to read and sign?

MR. RAMSEY: Yes, please.

COURT REPORTER: Usual stipulations?

MR. RAMSEY: Other than read and sign, that's fine.

MR. BROOK: Actually, I don't as a matter of -- I've always been trained don't as a matter of what I've always been trained to do, agree to usual stipulations, because it seems everywhere usual stipulations means something different. I agree to the federal rules of civil procedure governing this deposition.

MR. RAMSEY: That's fine.

(Whereupon, the following stipulations were entered into by the respective parties.)

It is hereby stipulated by and between counsel for the respective parties that the oath of the referee is waived, filing and certification of the transcript are waived, and all objections, except as to the form of the question, are reserved until the time of trial.

FRANK TORCHIO,

of Rochester, New York, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. BROOK:

Q. Good morning. This is not your first time being deposed, correct?

A. Correct.

Q. Is there anything about how this deposition works that you would like to go over before we begin?

A. I don't think so.

Q. When is the last time you were deposed?

A. Let's see. I think it was in May of this year.

Q. All right. So if any issues come up, usually the biggest one is just talking over each other. I sometimes am a little slow to get out my question. I am sure the court reporter will let us know, but that's just human nature. So what is your understanding of what this lawsuit is about?

A. Well, my understanding of my involvement in this lawsuit is to valuation, principally of Eber-Connecticut, the operating company that is owned by Eber-Metro, in turn owned by Eber Wine and Liquor.

Q. Or was owned by Eber Wine and Liquor, rather?

A. Sorry. That was correct. Was owned at that time.

Q. And do you understand this lawsuit is largely about whether the transfer of Eber-Metro from Eber Wine and Liquor to Alexbay was a valid transaction?

A. Yes, I am.

Q. And what else do you understand about what the issues are in this lawsuit?

A. Can you be a little more specific about what issues you're talking about?

Q. Sure. I know you were retained for a relatively limited purpose. But do you understand that there are a series of transactions that are being challenged in this case?

A. I understand the transaction that you're referring to. The foreclosure of stock that was through the layers owned by the beneficiaries of the trust.

Q. Okay. And so what is your understanding as to how the ownership of Eber-Connecticut changed in terms of the actual individuals who had an ownership interest as a result of that transaction?

A. Well, at prior to the transaction and I think my report has a pretty decent depiction of what the chart looks like. At the top is the trust that I understand is -- I believe a third of a third of a third to Lester. A third to Lester. A third to another trust beneficiary and a third to another trust beneficiary. And as you make your way down that chart, it is then the entity Eber Wine and Liquor that owns assets and has other liabilities. The asset principally then of Eber Wine and

Liquor Eber-Metro. And then the main company, the main operating company -- the main asset of Eber-Metro is then Eber-Connecticut. And Eber-Connecticut is the principal entity that I valued.

Q. You also looked at liabilities for the parent companies at some point though, correct?

A. Parent companies if you mean Wine and Liquor and Metro, yes.

Q. Why did you do that?

A. Well, in conducting a solvency opinion it is necessary to assess the value of the assets vis-a-vis the liabilities -- obligations that those entities have to pay as a going to concern or in liquidation.

Q. And I will get more into this later. Did you conduct any sort of forensic accounting work as part of your work?

A. I am not an accountant. Therefore, I do not do forensic accounting work. Does that answer your question?

Q. Sure. How did you -- and so calculating liabilities, what kind of work did you do for that portion of your report?

A. There are a number of liabilities that sat above -- Eber-Connecticut sat between. Eber-Connecticut and ultimately the trust. My first assessment is to

provide a legal opinion of the from the attorneys about whether or not those are legal liabilities of these entities. I am not a lawyer, either. But principally what I relied on is my expertise and valuing and understanding how investors view a company and view liabilities of a company. So that is the -- you know, once I had an established legal opinion that this was the case then it was well, okay. Now, let me do the assessment as to how a willing buyer knowledgeable about all the facts would assess the company.

Q. Okay. So who provided the legal opinion on what the liabilities were?

A. I posed the question to the attorneys that were on this case and there were a number of them. If you're asking me who ultimately gave me that opinion, I couldn't tell you. But it was a conglomerate of the attorneys that worked on this case.

Q. Okay. Is it correct you did not reference that legal opinion as something you relied upon in your report, correct?

A. I don't know. I thought I had.

(Whereupon, Exhibit Number 126 was marked for identification at this time.)

Q. Let's go ahead and mark this as our first exhibit. Officially, have you looked at this one?

A. Okay. I believe the materials relied upon are stated in Exhibit B. B as in boy. Yes.

Q. If you want to take a quick look at it. Maybe I missed it, but I don't see any reference to a legal opinion that you relied upon your report.

A. No. I didn't mean to imply that there was a written document. These were in conversations I had.

Q. Okay. So it's fair to say then that you only mentioned written materials relied upon in this report?

A. That's correct.

Q. Is that your standard practice?

A. It is.

Q. And is it your understanding that -- are given instructions to only include written materials?

A. No. This has been my practice for 30 years.

Q. Okay. So let's go over then what else you relied upon. So outside the written materials, you relied on at least a legal opinion of Underberg and Kessler of Eber-Metro and Eber Wine and Liquor, correct?

A. That is right.

Q. What else that is not a written document did you rely upon in forming your opinions?

A. Well, my experience. I mean I can go through this.

Q. I mean specific to the facts of this case.

A. Well, specific to the case of this case.

Q. Did you have conversations with anyone else other than the lawyers?

A. My staff, beyond that -- well, I know I spoke with Lester and Wendy a number of times.

Q. Okay. Then did you rely on those conversations?

A. Well, I can't point specifically to anything that I relied on for this particular question that you're asking, but there were a number of things that I did incorporate into my analysis.

Q. All right. Let's go to one example and maybe you can help me understand where you got it from. So please turn to Page 9 of your report on Exhibit 126.

A. Okay.

Q. In Paragraph 27 you refer to your understanding of what Eber-Connecticut's financial situation was in the winter of 2011 to 2012 and then you got a number of items listed there. Do you see that?

A. I do.

Q. Where did you get that information from?

A. Well, with a footnote 10 the information in Paragraph 27 is referenced to the auditor's report. And the numbers A, B, C and D, they would have been from conversations I had with the attorneys, with Wendy, with

Lester. Was there anything else? My recollection is I also reviewed an affidavit that Lester signed. I believe that it concerned the Harris Beach litigation. But it did recount certain facts that lead to -- among other things, the 2012 transaction.

Q. Okay. And did you conduct any attempt to determine the accuracy of the information that Lester and Wendy provided either verbally or there in that affidavit?

MR. RAMSEY: Form. Go ahead.

A. Well, I certainly did look at the financials. And I did have those financials recounted there in my report. I can't up come up with anything more specific than that. If you ask me some specific questions, I will try to respond to them.

Q. Is it correct that you did not perform any work to verify the accuracy of the financials?

A. No.

Q. Did you conduct any effort to determine the truthfulness of the individuals who were providing information to you?

MR. RAMSEY: I am not sure what you mean about that. Form.

Q. Is it your practice in providing expert opinions to rely on people and what they say if you

determine that those individuals are not trustworthy?

MR. RAMSEY: Form. Go ahead.

A. I am not sure how to respond to that. You want me to determine whether someone is trustworthy or not?

Q. If someone provides information to you that sounds absurd, would that be something that you would rely on just because it was provided?

A. That sounds absurd.

Q. That sounds like it doesn't make any sense to you?

MR. RAMSEY: Hypothetically, you're talking here?

Q. Yes, in your experience.

A. I mean I suppose. I can't recall a situation where someone's statement rose to the level of what you would -- what I would consider absurdity. I can't recollect any particular instance of that occurring. I suppose that if someone said to me, you know, the sun is rising from the west. I could consider that absurd, yes. That hasn't happened to me.

Q. Okay. And what about have you ever relied on the statements of individuals who were determined to have committed fraud?

A. Yes. There have been instances. Generally, my approach is that if my opinion is predicated on something

that is given to me, recounted to me and it turns out to be false, then I will respond whether or not in court that particular issue has an impact on my analysis.

Q. If you included facts in your report, does that mean it necessarily had any impact on your analysis?

A. Well, insofar as the background section is giving the background. That's basically what it's there to do. Provide whatever factual basis I have and my understanding of the situation that occurred back in 2012. You would have to be specific as to whether or not a line of information or a particular piece of background affects my opinion.

Q. So let's look at this Paragraph 27-B. You said it was your understanding that quote, "Eber-Connecticut suffered as a result of the aggressive competitive actions of Southern and other competitors and fliers." Do you see that?

A. I do.

Q. Is that something that was important to your opinion?

A. Indirectly. It wasn't important to my opinion, but it fit the circumstances of the case. And I think that piece of information was derived from the affidavit -- the signed affidavit by Lester.

Q. What was your understanding of the relationship

between Southern and Eber-Connecticut at the time?

MR. CALIHAN: Objection to form. Brian, what time period?

Q. Sorry. Paragraph 27 refers to the winter of 2011 to 2012.

A. I believe during that time period Southern, as I understood from the affidavit -- Southern basically took over the business -- that's a poor way of putting it -- made an effort to become a distributor in New York State. And for the most part, I think it was the single biggest factor as to why Eber Brothers or whatever the entity was in New York State left New York State.

Q. Well, this paragraph or this subpar paragraph refers to Eber-Connecticut. So it was only operating in Connecticut, correct?

A. Sorry.

Q. And so was it your understanding that Southern was affecting Eber-Connecticut?

A. You know, I don't recall. I remember the effect on Southern in New York State. It may well have been that they were trying to do the same thing in Connecticut or attempting to, but I don't remember specifically.

Q. And were you aware of any business relationship between anyone associated with Eber-Connecticut and

Southern?

A. I recall an offer made for Southern for Eber-Connecticut, an offer for 50 percent interest.

Q. Were you aware when you formulated your opinion that Lester Eber was a paid consultant for Southern?

A. I do remember that, yes.

Q. And did that affect your opinion in any way?

A. It did not.

Q. Why not?

A. It just didn't.

Q. What is your understanding of how that consulting agreement came to be?

A. I believe it had to do with the Southern's movement into my New York State. And I can't remember if there was a transaction of some kind, but there was some payment made as I recollect from Southern to Lester or to Eber Brothers. I can't remember which.

Q. Other than speaking with a Lester and Wendy and other lawyers from Underberg and Kessler, did you speak with anyone else in connection with obtaining facts for this case?

A. Again, I think I would include my staff in that. They assisted me going through documents -- those conversations.

Q. Did your staff also speak directly with Lester

and Wendy?
A. With me, yes.
Q. Was it your practice to take notes of your conversations with Lester and Wendy?
A. It's not my practice to take notes.
Q. Did you take notes in this instance?
A. No.
(Whereupon, Exhibit Number 127 was marked for identification at this time.)
Q. All right. And since you've issued the report my client's expert Glenn Liebman has issued a report. Have you seen that?
A. I have.
Q. And I don't have any specific questions about this now other than -- so after having reviewed this report, you were given the opportunity to provide a rebuttal report; is that right?
A. Could be.
Q. Why was the -- why didn't you end up providing a rebuttal report?
A. I didn't feel it was necessary. I can't remember exactly if I was that specifically -- if I had to do a rebuttal report, but I said I am not bothered by anything in this report. Let's go to trial.
Q. Okay. And so let me go ahead and ask you about

this. There were a couple of issues that Glenn Liebman gave an opinion on that were not topics that you directly addressed, correct?

A. If you can be specific, I will be happy to respond.

Q. Do you recall Glenn Liebman provided an opinion of the value of Eber-Connecticut as of May 31, 2018?

A. I think, as I remember, that there was some criticism that the valuation date that I used was several days removed from the valuation date that he was using or determined to be appropriate.

Q. I will stop you. That's not what I am not referring to. I am referring to 2012.

A. I beg your pardon.

Q. If you turn to Page 19 of Exhibit 127. That will refresh your recollection.

A. Page?

Q. 19.

A. Okay. I am there.

Q. So this was essentially based on the most recently available financial information providing a valuation of Eber-Connecticut using eventually the same general approach that both you and Mr. Liebman used, correct?

A. The same general approach, yes.

Q. And you reviewed this and you said you did not see any problems with this; is that right?

MR. RAMSEY: Form. Go ahead.

A. I was not asked to respond to this analysis.

Q. Okay. And so you have not, in your work in this case, formed any opinions as to whether this is correct or not is that right?

A. Well, if you're asking me if I looked at this and formed an opinion, I have.

Q. But that is not an opinion that you intend to introduce in this case?

A. I would be happy to introduce it in the case. You want to ask me what it is?

Q. Since it's not in a report, I think it's just as well. Well, look. I don't think it changes the admissibility. So, go. Please, do tell me your opinion on part of it.

A. I didn't do a full assessment of the valuation, but I tried to do a bit of a sanity check on this valuation. And my recollection -- and this was back at envelope stuff. But my recollection is that if you took EBITDA ratio -- I believe that EBITDA ratio -- his value to the -- pardon me. His value to EBITDA as of 2018, I believe that number is something like 40 times EBITDA. The valuation is 40 times the amount of EBITDA in that

year. So I asked my people, I said, "Well, it seems high to me. Let's see if that really is high." So we went and we have access to all the companies -- all the publicly traded companies on Nasdaq and NYSE. So there was approximately 2,800 companies we downloaded their EBITDA ratios for all those 2,800 companies. The ratio of 40 would put you into the upper 10 percentile bracket. So the highest 10 percent of all 2,800 companies traded in the United States. This would put them in that category. So I said, "Well, that's interesting." I said that indicates, you know, substantial growth rate implied by the EBITDA multiple. I said let's take a look at the last three years' growth rate -- compounded growth rate for those companies in the upper 10 percentile -- these public traded companies. So the average and median growth rates for the last three years leading up to the 2018 valuation was 14 and a half and 15 percent median and mean. So it is showing very substantial growth in the last three years, which is consistent with a high EBITDA multiple. I then said let's look and said what the growth rate has been for Eber-Connecticut over the same three years. Now that growth rate is something -- the compounded average growth rate is something like three percent. So you start to see the somewhat inconsistencies here that this valuation at least at a

sanity-check level appears to be quite aggressive given the growth rate that Eber-Connecticut has exhibited given that the implied multiple is in the 40 percentile bracket -- excuse me -- in the upper 10 percentile bracket. There is an inconsistency with the degree of growth. So effectively what this analysis would imply is that you could -- one would expect given this multiple a growth rate of 15 percent over the next three years compound annual growth rate or more. And that seems highly unlikely to me. So that is the, you know, the only analysis I did. Just to say -- this appears high. Is it high? It is high. And it is inconsistent with the market data.

Q. Well, the market data there is a lot of things that doesn't account for any particular circumstances of any particular company, right? It's just you're looking at a --

A. On average it does account for what the expectation of growth rate is for companies that have high multiples. I mean, if you would like I can write down for you the formula that explains the relationship between a multiple and growth rate. It is a algebraic relationship.

Q. As a part of your -- did you do anything else, as you called it, a sanity check on this number?

A. No. I think that's all I did.
Q. Did you consider the fact it's still a lower number than what Eber-Connecticut was bought for 14 years ago?
A. My sanity check is what it is. I looked at the analysis of how this fit with publicly traded companies. And all I am saying it was well outside the norm for these publicly traded companies that have those kinds of EBITDA multiples.
Q. Are you aware of any publicly traded companies that operate as wine or liquor distributors in franchise states?
A. I know that we did search for that, but that would have been as of 2012 from my valuation work. And I know why we limited it to those companies that had negative EBITDA. And we did not find any liquor distributors -- pure-play liquor distributors that would fit that criteria.
Q. And why didn't you even look to see if there was someone that was in the same line of business, but with a positive EBITDA?
A. There was a strong relationship between the multiples -- valuation multiples and whether or not you're profitable. And at that point in time Eber-Connecticut had exhibited a number of years -- I

think maybe as back as far as 2007 -- that showed negative profit -- negative EBITDA. So that has a very specific relationship between your comparables. One of the strongest relationships between comparables that you're going to choose. So I limited it accordingly to those companies that had negative EBITDA.

Q. You can do an enterprise value revenue assessment of a company whether or not its EBITDA is positive or negative, right?

A. You certainly can. But it's not relevant if the company you're looking at has extraordinarily high profitability. Let's say their profit margin is 10 percent and the company you are trying to elevate has continual profit margins of negative percentage 10, 15, whatever the case may be. That would imply those are not comparable. And one of the key areas for comparability is profitability.

Q. So in your opinion when a company is profitable, is the enterprise to value to revenue ratio multiple higher or lower than when it's not profitable?

A. Generally when a company is not profitable the radio is lower.

Q. So in this case on Page 19, the enterprise value to revue multiple, that was based off of indicators of value that occurred when Eber-Connecticut was not

profitable, correct?
A. I don't recall what he based it on.
Q. The Southern offer and Eder-Goodman transaction refers to negative EBITDA on both of those time periods. Do you see that?
A. So he is referring to the EBITDA of Eber-Connecticut?
Q. Correct.
A. Yes.
Q. And so in your opinion then as of 2018, once the company was profitable, value to revenue multiple should actually be higher, correct?
A. Well, it would be higher than what it was in 2012. Of course I disagree with the numbers he has got here. I've got numbers that are lower than that.
Q. If we used your numbers say, those would still be too low as of 2018 profitable, correct?
A. I am sorry.
Q. Putting aside the exact number, it's your opinion that once the company became profitable by 2018 at least that the enterprise value to revenue multiple that was used from a period of unprofitability would be too low to accurately value the company?
A. That is a plausible inference. That would be something that one would do in assessing. To do to a

comprehensive analysis, I would certainly think about that. It wouldn't be the only thing I would think about. As I said, I did not do an analysis valuation. I am just giving my insights as to what the implications of his valuation is period.

Q. What do you ever consider what settlement offers have been made in a case in determining whether, you know, a particular valuation meets a sanity check? Have you ever considered --

A. A settlement offer in litigation like this?

Q. Yes.

A. To use that as the basis?

Q. Not as the basis. You referred earlier to a sanity check. What did you mean by that?

A. Well, I think I fairly well described to you what I mean by that sanity check is to look at the implication in this instance -- the implication of the valuation vis-à-vis companies that have a high EBITDA multiples who have on average high growth rates. And compare that with the growth rates for Eber-Connecticut over that same pre-three-year time period. That was the sanity check. It's very simple. It's just looking at publicly traded companies and saying whether or not the inference from this analysis makes sense with regard to publicly traded companies.

Q. Does management's opinion of what a company is worth ever affect your assessment of whether a valuation is reasonable or not?

A. Well, I guess it depends on the assignment. I certainly listen to what management has to say. Management are the frontline. They know the business. I am not an expert in wine or liquor or any other business for that matter other than consulting. But I am a valuation expert. So I do consider anything that frontline managers have to say about how they run their business, how other companies run their businesses. So I consider it. Whether or not it's used in any meaningful way is -- that's really depending on the particular facts and circumstances.

Q. Did you discuss the approximate current value of Eber-Connecticut with Wendy or Lester?

A. No.

Q. So you did not ask Lester, for example, whether he thought the value used by Mr. Liebman of 20.4 million dollars was an reasonable valuation for the company at this time?

A. No.

Q. Why not?

A. Well, as I said before, all I did was do a sanity check based upon publicly traded companies. I was

not trying to do my own comprehensive analysis or opinion as to what the valuation was in 2018. I wasn't asked to do it. I didn't do it. But I was curious, and I wanted to see whether or not the numbers put forward by Liebman made sense relative to publicly traded companies.

Q. This is not a publicly traded company though, correct?

A. No. Not that it matters. But no, it's not publicly traded.

Q. Why doesn't that matter?

A. Why would it matter? Publicly traded companies are often used to value private companies. Your question seems to implicate or imply that it's not within the principles valuation to use multiples for publiclytraded companies to value a private company. That is false. You can. You do. It's actually prescribed in valuation textbooks like Pratt. So I, you know, that's why I answered the question that way I answered. The only thing that is very important when you're valuing a private company use public multiples is that you've got to take an account of marketability for the private companies. So if anything the value is going to be lower. Not higher.

Q. So the inability for the private company owners to transfer their shares, for example, results in a lower

valuation?

A. Yes. There generally is a marketability discount if you're trying to sell let's say, you know, you're thinking about five shares to somebody. Well, then you normally would be taking a marketability discount because the buyers of a private company are going to price protect themselves when they try to sell those shares.

Q. I want to turn your attention next session, which is another part of the Liebman report that was not responding to something that you did. It's concerning the economic rationality of the Eber Brothers board's decision to consent to the transaction of Eber-Metro from Eber Wine and Liquor to Alexbay. Did you review that part of the Liebman report?

A. I know I read it, but point me to the page and I will reread it.

Q. The very next page.

MR. RAMSEY: Do you want him to read the whole thing?

Q. I was just wondering if he had read it before.

A. I had, but it's been a while.

Q. Let me know when you had a chance to refresh yourself.

A. Okay. What is your question?

Q. So did you form any opinions -- I understand you didn't put it in a report and it's nothing official, but I want to know -- did you form any opinions about whether you agreed with any of the statements in this section?

A. Well, I generally disagree with the conclusion, you know.

Q. Just so we're clear, there are a couple of conclusions in here, which conclusion are you referring to?

A. There is no economic rationale.

Q. Okay.

A. When -- again, if you go to the hierarchy and you look at the numbers that I came up with, yeah. I do agree that Eber-Connecticut had positive value. The implication of expected values -- the present value of those cash flows are greater than the liabilities at the Eber-Connecticut level. As you work that way up that chain when the other liabilities start to present themselves and are offset by these assets of Eber-Connecticut, in my opinion, that turns negative. If it's negative there is an economic rationale.

Q. What is that rationale? Maybe I can direct your attention to the fourth paragraph on Page 20. It addresses that specific thing, and I am curious as to

whether --

MR. RAMSEY: Let him answer the question.

A. I am not sure what -- you asked me about rationale. Let me explain it to you. So I am just going to draw you a picture. You can have this. This is something that -- it's an analysis that applies option theory to the various claims in a publicly traded company. So these are debt obligations and these are the equity. These are the payoff functions. Now what happens that when the value of the firm is high -- this is the line that's the value of the firm -- when it's high, the equity has value. As the value of the firm declines, we go this way. You see the value of the equity declines. Ultimately it goes to zero when the obligations kick in. So you can think of -- this is kind of a payoff of a call option. But you can think of this where this is the exercise price. You can think of this as face value of the liabilities. Okay. So if the value in the case of Metro Wine and Liquor -- if the value of that goes down such that now you got a situation where the value of the company is actually less than the value of the liabilities. You're down here someplace. Now, in those situations the value of equity has zero value. Not negative, but zero.

Q. At least at that sliver of time, right?

A. Yes.

Q. Value changes over time all the time in a company, right?

A. Well, I mean, look, you can always speculate about whether value is going to go up or down. But the point up when you do a valuation as of a particular date, you're doing a valuation that it accounts for, you know, what those expectations are, what your best guess of those expectations are. That's how you do a valuation. So there is the economic rationale. If the value of that equity goes to zero, then the debt holders become de facto the residual claimant for those assets. That's why you see this thing declining. It looks kind of like equity, doesn't it? That's exactly what happens. The debt holders become de facto the residual claimant or the equity holder to the company. And the equity holders go away.

Q. So it's your understanding then --

A. You can keep that.

Q. We will mark that as Exhibit 128.

(Whereupon, Exhibit Number 128 was marked for identification at this time.)

A. This is actually an analysis by Robert Merton who has won a Noble prize for this.

Q. Let me make sure I understand you correctly.

So in your understanding of how a corporation works, once a corporation determines that it is insolvent in that its debts exceed the valuation of its equity or its assets --

A. Assets.

Q. Then at that point there is no longer any obligation for that company to generate shareholder value?

A. There is an -- this is interesting because once a company goes to financial stress, the company not only has an obligation to maximize shareholder value but to maximum all claimants' values.

Q. Right.

A. So, yes. That's right. Now in this situation --

Q. Let me stop you there because I think the transcript is going to be a little crazy. So you said not only maximize shareholder value --

A. Sure.

Q. So the obligation to maximize shareholder value still exists then if the opportunity were to arise, correct?

A. Sure.

Q. Okay. It's not like the obligation to act for the benefit of shareholders vanishes upon insolvency?

A. Right. Let me finish. Now you've got an

obligation to the debt holders, the obligors here in this particular instance. And you cannot then, you know, do something that would harm them because of the equity holders. That would be incorrect.

Q. That would be a breach of judiciary?

A. Yes, it would. So you can't just say, you know, by gosh. I like these shareholders. I am going to give them some carrot here to keep them going. And the bondholders are going, wait a second. Wait a second here. You've got an obligation to me. This thing is below my face value of debt. Now the obligation goes to me. And you can't just wealth transfer to shareholders because you like them.

Q. Well, can you wealth transfer to one creditor the exclusion of the others?

A. Generally, you've got take in. So I can make this more complicated by looking at the priority of these claims. So you're going to have some claims that have higher priority than others. Unsecured debt has a lower priority than secured debt. So you can have a series of these kinds of charts where the first unsecured debt starts to go down. But the value of secured debt does not change.

Q. Right.

A. Then if goes below the unsecured debt, now you

got a situation where the secured debt becomes the residual claims.

Q. Are you aware that at least two of the unsecured creditors of Eber Wine and Liquor ended up suing in relation to the transfer to Alexbay?

A. I know that there was lawsuits. I think you might be referring to Harris Beach.

Q. And Harris Beach and also the Pension Benefit Guarantee Corp -- PBGC?

A. Yes, absolutely.

Q. It was your understanding that Lester's loans were secured, correct?

A. That is my recollection.

Q. And do you understand in the case the plaintiffs have challenged the legitimacy of that security agreement?

MR. RAMSEY: Form. Go ahead.

A. That could be. I don't remember.

Q. I will represent to you -- you're an expert. So we do some hypotheticals. So hypothetically speaking, if the security agreement between Lester and the company were invalidated --

A. The security agreement is invalidated.

Q. So those are not secured loans anymore.

A. It is a loan though -- unsecured loan.

Q. In that instance, could the company have given a preference to Lester's loans over other unsecured loans --

MR. RAMSEY: Form. Go ahead.

Q. -- when it was insolvent?

MR. CALIHAN: Objection to form.

A. It sounds like you're asking me for a legal conclusion here. I can tell you as an economist, as a valuation expert, if you tell me it has priority over the equity holders, that's all I care about. Whether they stand in line of or in front of PBGC, I am not sure at all how that affects this analysis that I just provided to you. As I mentioned before, this would -- if I drew this chart -- one more chart below these could be unsecured debt. The same analysis would apply. They stand ahead of -- they are in front of the secured debt, but they certainly have priority on the equity. And that's the question you initially posed to me, the economic rationale of that transaction. So I am not sure how the hypothetical of whether it's secured or unsecured affects this analysis.

Q. Let me ask you this then. In terms of economic rationale, in your opinion, was there any conceivable benefit for the shareholders by consenting to let Eber-Connecticut and Eber-Metro be transferred out of the

trust assets and over to Lester Eber alone?

MR. RAMSEY: Form. Go ahead.

A. Was there any benefit? Could you repeat that question? That was confusing.

Q. I will rephrase. I guess, let's just look at this fourth paragraph. There are a few statements and I am curious whether you agree with them.

A. Okay. Paragraph what?

Q. The fourth paragraph on Page 20. We will go line by line. In this paragraph -- and you don't have to agree with the first one for the record. Here Mr. Liebman states that the lack of economic justification is apparent even if the net value was significantly lower or even negative at the time. And it was, just so we're clear, in your opinion the net value was negative at that time of the Alexbay transfer, correct?

A. Correct.

Q. So the next sentence says that is because Eber-Metro reflected Eber Wine and Liquor Corp sole operating asset. The fact stated there that it was the sole operating asset, you would agree with that, correct?

A. Yes. You know, because Eber-Metro owned Eber-Connecticut, which is the operating asset. With that caveat, yes.

Q. And next sentence says quote, "As long as

company remains going concern it has the potential for positive value." Do you see that?

A. Uh-huh.

Q. Do you agree with that statement?

A. I mean as a general matter, that's fine.

Q. Next sentence quote, "This could happen in any number of ways. Even if it was insolvent it could potentially restructure through bankruptcy proceedings and emerge capable of generating positive shareholder value." Do you agree with that statement?

A. Sure, it's possible. You can always imagine restructuring. This was a form of restructuring. It's eliminating the equity holders. And it allows the debt holder to become the residual claimant. So it is in fact restructuring. As far as I know, there is no legal obligation to continue to keep equity holders as equity holders when the value of their equity is zero. Again, that's a legal determination. And all I can tell you is from my experience that's the case. Let me give you a specific example. There is a company that was in Delaware -- a big case in Delaware called Trados. Very similar circumstances to this. It was a merger. You can think of it as a restructure. And the preferred had -- again, it was a priority claim on the preferred shareholders. And the opinion is that because the

company did not do well -- wasn't doing well. And the merger price -- it didn't even cover the value of the preferred stock. So in the merger the preferred stock got all the proceeds from the merger. Common stock got zero. The common stock sued saying, "Well, you know, why is the responsibility on us?" The court says, "Doesn't exist." As of this date, this valuation is zero.

Q. So valuation was based on an actual transaction?

A. Yes. Well, the value -- the merger transaction was the merger transaction. The valuation was based upon the value of the common stock at appraisal.

Q. Was that an arm-length transaction?

A. The price paid?

Q. Yes.

A. Certainly the judge accepted it as such.

Q. In this case, you understand that this was not an arm's-length transaction that occurred between Lester Eber and --

MR. RAMSEY: Objection. Form. Go ahead.

A. I am sorry.

Q. In terms -- Lester Eber was an insider to the company, correct?

A. Yes.

Q. And did the fact that Lester Eber was a

co-trustee of the trust that owned the company affect your opinion in any way?

A. Are you asking me whether that it somehow caused me to change the numbers or do a different valuation?

Q. I am asking if it affected your opinion in any way.

A. No, it didn't.

Q. Do you consider that to be more a legal matter than a valuation matter?

A. Well, I am taking the structure as given. Look, if somehow someway you convince the judge that none of this stuff is valid. Not my valuation, but the whole structure of this thing is invalid, then my valuation becomes invalid. It's predicated on this being a valid transaction on the company with providing me with valid information. If those things go out the window because you've proven your case that everything is fraud, so be it. I am out of it.

Q. So is it fair to say -- let's step back. Have you ever heard of the entire fairness doctrine?

A. Yes.

Q. Is it fair to say -

A. This comes up in mergers.

Q. There are two components to that. One is fair

value and fair process, correct?
A. Exactly.
Q. And is it fair to say you are only an expert on the issue of valuation, not process?
A. I think that is generally the case. So I have been in a number of appraisal actions where the process as well as the price issues the contention. As a general matter, I do not get involved in the process. If the judge finds the process is invalid, well okay. So be it. But my valuation is my valuation.
Q. Okay. So let me ask you this. So getting back to the issue of the economic rationality. So you agree there is at least potentially -- some potential for positive value as long as the company has a going concern as one of its assets; is that correct?
MR. RAMSEY: Form. Go ahead.
A. I am sorry.
Q. Some potential for future positive value?
A. Maybe. Maybe not.
Q. So that's a yes, there is potential?
A. It's possible.
Q. Once the going concern asset is removed from the company and all that's left with is liabilities and a small amount of cash that is way less than the amount of liabilities, there is no possibility of future value,

correct?
A. Say that again.
Q. Once the company no longer has any going concern assets and only has a huge amount of liability and a much smaller amount of assets, at that point there is no shareholder value for good, correct?
A. I mean it depends, right? It depends on what those assets are.
Q. Say it's just cash in a bank.
A. Cash in bank. Okay. Go ahead.
Q. So at that point, do you see any way in which the shareholder can ever have positive value?
A. I don't know. It could be. Anything is possible.
Q. Can you think of any way that would happen?
A. Boy. I mean something that could cause the liabilities to go down over time and the cash remain the same. I don't know.
Q. So short of liabilities being reduced and for some reason the debt holder is deciding not to take the cash --
A. You get double-digit inflation like we had in the 1970s, you know. It's very difficult to respond with a specific answer to those kind of questions. It's a strange hypothetical.

Q. Sure. So let's use specific numbers if it's a little bit easier. Not the exact dollar amounts in your analysis, but roughly there. After the Alexbay transfer, the debt to Lester Eber and Alexbay was eliminated, correct?

A. Yes.

Q. So you were left with approximately eight million dollars in debt owed by, according to your report, Eber Brothers Wine and Liquor, and then a little bit less than that, let's say 7.5 million by Eber Brothers Metro. Okay. Does sound about right?

A. I think so.

Q. Okay. So let's say 7.5 million dollars in debt and $362,000 in assets for Eber-Metro. Were those of the holdings of the company short of stagflation and banks deciding to pay incredible interest rates or making a remarkable investment with that amount of cash, can you think of any way in the normal operation of a business or holding company that the shareholders in that situation that the company could receive value -- positive value?

MR. CALIHAN: Objection to form.

A. I don't know. Not sitting here I can't think of a plausible way other than the things that I talked about before.

(Whereupon, Exhibit Number 129 was marked for

identification at this time.)

Q. This is Exhibit 129. I am showing you what's been marked as Exhibit 129. Do you recognize this?

A. Yes.

Q. What is this?

A. This is the exhibit that underlies the valuation based upon the Eder-Goodman transaction in 2008. And it is revised to account for the incorrect methodology of applying the premium reduction for two items with regard to this transaction.

Q. Which two items are that?

A. So there are two things that are required to adjust the actual purchase price. One is that the transaction included -- both reflect the transaction included certain valuable rights that were obtained by Eder-Goodman extensively part of the purchase price. So they have to be reduced -- the purchase price has to be reduced to reflect the value of those particular rights in order to come up with a valuation or an attempt to come up with valuation of Eber-Connecticut absent the rights.

Q. And so one of those rights, the right of first refusal, you analogize to a control premium; is that right?

A. Well, I don't know if the analogy is what I am

referring to. I think it to put in a more direct connection the ROFR effectively limit to obtain a control premium in the future.

Q. So we're clear for the record, by ROFR you mean right of first refusal?

A. Yes.

Q. So were these the corrections that were based on what the Liebman report had pointed out in terms of flipping a discount with a premium?

A. Exactly.

Q. In fact on some of your of analysis, you didn't have to make the correction because you did it correct in the first instance, right?

A. Correct.

Q. When you first did the calculation, you combined the two premiums 15 percent and 25 percent and then you did a 40 percent reduction, correct?

A. Yes, I don't remember.

Q. Okay.

A. It could be.

Q. All right. If you want to take a look at Exhibit 126. If you want to check, 1.8 million, which is the premium you calculated here, is 40 percent of 4.5 million, right?

A. Yes, it is.

Q. Okay. So it's fair to say that you took the 15 percent ROFR premium and the 25 percent preferred premium and just combined them?

A. Let me double-check because it seems odd to me. So does the discount.

MR. RAMSEY: She is taking down everything you say. So keep it to yourself.

A. So I multiplied them independently and then added up the one. So it is .15 to times 4.5 million and then .25 times and 4.5 million. Added those two numbers up.

Q. And so both instances you made sure the premium was applied to the base price. Not the enhanced price?

A. In the initial report.

Q. Do you believe that was incorrect?

A. Yes. I think I agree with what Liebman said is that these things should be divided by one plus premium. I originally had written the report to reflect it as a discounted and decided to change it to a premium and somehow it didn't get to my people who did the spreadsheets.

Q. There was a couple of sentences that seemed to conflict with each other. But treating it as a premium, but you didn't just change the way it was calculated to a discount to a premium. You also made it so the premiums

were consecutive or accumulative in your revised chart.

A. That's the appropriate methodology after he pointed out I didn't divide -- I multiplied the price instead of dividing to get the stand-alone. I made sure that we adhered to the way that the literature suggests -- well, requires to accommodate that.

Q. So when dealing with the situation of multiple premiums, the literature says that the way you calculated in the revised C1 is the way to do it?

A. Yes. I think it's Bruner that discusses this. And if you give me a second, I think I can give you the exact site. Well, I can't seem to put my finger on it. But I know the author is Bruner.

Q. I will --

A. I can dig it out.

Q. I will request that. I am not saying it's going to be sufficient for whatever disclosure reason or anything, but I request that the underlying rationale, whatever is being used to support the calculation methodology, be disclosed to us. I just want to make sure we're talking about the same thing. In your view, if you take what the adjusted price -- the base price -- the real equity value of the common shares --

A. Uh-huh.

Q. -- you then add a premium for the preferred.

A. Yes. And divide by one plus the premium for the preferred.

Q. Okay. So once you actually -- after having calculated the preferred, but I am actually doing it backwards. Not how you got to here. I am just trying to see how it works and to make sure this is right -- sanity check. Starting from the adjusting price.

A. Yes. Okay.

Q. So you're saying that the way, you know, if you were calculating what Eber or Eder-Goodman should have paid based on that price, you would add a two premiums, right? One for preferred and one for right of first refusal, correct?

A. So I would first account for the preferred premium by multiplying the stand-alone price times one plus the premium. Then I get a value. Then I take that value and multiply it times one plus the ROFR.

Q. And why do you do the preferred premium first?

A. You can do the ROFR first if that's okay.

Q. Does that affect the ultimate value?

A. No.

Q. And so why is it appropriate to apply -- if you can do it either way, why is it important to apply one premium to the enhanced value or the already premium enhanced value rather than applying both to the based

value, right? Because it's a premium paid on the true equity value, shouldn't the premiums both be based on that true equity value and not taking into account a totally separate premium? Because then you're paying a premium on a premium, right?

A. No. I think that's the formula.

Q. In this instance the parties themselves did not break out any particular allocation of premiums, correct?

A. No.

Q. And in terms of how it affects your ultimate opinion on insolvency, it's actually very important to do it the way that you did and not the way I was describing where you apply both premiums to the base value, correct?

A. To my ultimate opinion?

Q. Yes.

A. No.

Q. So you haven't done the math to see that if you do it the way you originally did it and apply the premiums to the base value that it actually ends up being a solvent company?

A. I think you're suggesting does that particular valuation result in a positive number if you did the -- computed the premiums differently.

Q. Yes.

A. And the answer to that is yes, it would. Would

it change my opinion? No, it would not.

Q. So this was -- so in fact in addition to correcting the error that the Liebman pointed out, you corrected another error. And that helped you to maintain an opinion --

MR. RAMSEY: Form. Go ahead.

A. So that's the appropriate methodology to assess the premiums. When you have discrete premiums for different rights that are being applied. So I adhered to what the literature stated to do. The prior analysis had to do with discounts. And as I discussed earlier, that was a mistake.

Q. Right.

A. It was an error made in that calculation.

Q. And because actually when you're doing it in terms of discounts, doing it the way you originally did it resulted in the lowest number, right?

A. Well, it does.

Q. You have been shopping before, right, and they say take an additional 10 percent off. That doesn't end up being accumulative. That's how the stores actually make you feel like you're getting a better discount than you are. You did in the way the first instance that would result in the lowest number. And in the second instance you switch the order and did it again in the way

that results in the lowest number?

MR. RAMSEY: Form.

A. I don't know if that's true. I just tried to correct the error that Liebman pointed out and tried to correct it in the proper way based on what the literature suggests.

Q. I look forward to seeing that literature. Is there any margin of error when you conduct a valuation?

A. Well, no valuation is so precise that it is with 100 percent certainty. So there is always some degree of uncertainty that reflects a valuation. That's why you do a number of different valuations, you know, try to do different measures to try to understand, if you will, the degree of uncertainty and to account for that in having a range of values that obtains from different measures of valuations.

Q. Suppose you're -- we're talking hypothetical world. Say that you are dealing with a valuation. You don't have anything except for one sort of calculation. Not like the five here. You got one prior transaction and that's what you're basing your valuation on. Are you saying in that instance there would not be any margin for error in your valuation?

A. No. I am not saying that.

Q. So there is -- is there any sort of way to

quantify that margin of error in that valuation method?
A. Well, you could. You could. I think the key -- let's go through each of the valuations. So I would say that the key problems with these valuations are the kinds of things that you would do sensitivity analysis on to see whether or not or see how that affects the --
MR. RAMSEY: Are we still in hypothetical world here?
Q. We're talking about general principles of valuation.
A. Yes. Sorry. Thank you.
Q. Were you talking specifically about --
A. Let me respond to your question correctly. So what would one do is look at the key variables that are responsible for the uncertainty. And you first -- in your determination, depending upon which side you're on, you decide you go with an expected value for those key variables that are conservative. Then you start making changes to those values of that variable to see how it affects the valuation. That would be one way to ascribe a degree of uncertainty to a particular valuation or to a range of valuations.
Q. I know you're not a CPA, but are you familiar with the concept of materiality and gap?

A. Well, I am. Materiality is one of those loaded phrases that means different things to different people, you know, legally, accountants, economists. So, you know, if you want to give me a definition, I will be happy to use it.

Q. Well, I think there -- I am not going to purport to try to define it either. Basically, is it fair to say that the concept of materiality takes into the consideration that there is margin for error in any sort of financial reporting under gap --

MR. RAMSEY: Form.

Q. -- and that sometimes that it's small enough that it doesn't really matter?

A. I have a hard time agreeing with that characterization. The latter part seems to be perfectly reasonable. If something that, you know, if it's General Electric and in the market cap is billions of dollars and General Electric has a truck blow up, is that small enough not to -- if that value is small enough not to report to shareholders -- it's not material enough. I would agree with that. It's small. Whether that's because of uncertainty -- that's kind of a new concept that I have not heard.

Q. Let me put it this way. So I am talking mainly in terms of let's say income numbers. So accounting can

oftentimes lead to -- especially when you're talking about accrual accounting and companies have things coming in after the end of the year, it's not clear where you put it, different accounting methodologies being applied to the exact same numbers can result in significant differences in terms of reported income for a company; is that fair to say?

A. Can you repeat that question back? That was kind of a long-winded setup. Make sure I got it all.

Q. I will rephrase. Is it fair to say that the choice of accounting policies by a company can affect what its reported financials say in terms of the dollar amount of income earned?

A. Yes.

Q. So if an accounting policy were to simply be changed, then the numbers would be different?

A. Yes.

Q. And in not all instances would those differences necessarily be materials to the value of the company; is that fair to say?

A. So there is a lot of literature -- economic literature on this particular point. And the upshot of the literature is that investigators see through accounting fiction. So if one company is using some straight-line depreciation and another company is using

accelerated depreciation, are those companies valued differently? No. Investors see through those kind of accounting choices that companies make, and they are able to adjust their valuations accordingly. I don't know if that answers your question. That's kind of my reaction to your point about accounting choices.

Q. Let's say putting aside that kind of thing. So are you familiar with the concept of how sometimes income might be taken all at once, or it might be amortized, capitalized over time or same thing with expenses, right, sometimes say there is a three-year contract, but a company gets paid all up at once. The accountants would probably say you have to report that over a three-year period, the life of the contract; fair to say?

A. Could be.

Q. So in that instance how would that -- does the choice of whether or not to record that money all up front or over time affect a valuation analysis?

A. Well, I mean the choice certainly has an effect on the numbers. But does it affect a valuation? Let's deal with the situation of an expense. If you have a cost that's capitalized, what you're basically saying is that the benefits from this particular expenditure are going to accrue over a number of years. And is it appropriate to reflect a fraction of that cost in a given

particular year, yes, because that's kind of how the economics relates to the accounting numbers. Consequently, if you have a cost that is a one-time period expense, then you would reflect it in that particular year because the benefits from that particular expenditure are expected to happen in the year that those expenses are occurred and recorded as an accounting.

Q. Right. I actually wanted to stay away from expense because an EBITDA capitalized expense is actually taken out of the calculation, right, because it's part of amortization?

A. So the depreciation on the equipment?

Q. Yes.

A. Fair enough.

Q. I mean the --

A. The reason that it's done is because you've got -- you're trying to assess the cash flow. And EBITDA is probably the closest accounting number to cash flows because that's true. It doesn't account for depreciation, but it doesn't account for the offset capital expenditures. So in a simplified world where capital expenditures equals depreciation or they're similar, it is reasonable to and it is done by a lot by financial analysists and in security reports that you would use EBITDA as a closest surrogate proxy, if you

will, for cash flows from the accounting income statement.

Q. Okay. So going back to my example if a company that has a three-year contract, gets paid all upfront. Let's say the company is valued after year one. Depending on whether that company amortizes that income or records it all at once, its reported income that would be going into your valuation analysis could be very different, correct?

A. Well, if you're reporting income that in one year that you had not earned, then that's a mistake. And that would be a, you know, in my experience in security litigation, which is the last 30 years, that would be a big problem. And you would get sued for misrepresenting your revenue. So like I said, whether it's income, whether it's expenses, if you are reporting numbers that you shouldn't be reporting, does that make a difference, yes. And you're going to get sued for misrepresenting your income for that particular year.

Q. I am not trying to get into liability issues right now. Is it fair to say in accounting there are a number of gray areas in consistently evolving standards where contracts have complexities that, you know, would not be encompassed easily within a hypothetical question in a deposition?

MR. RAMSEY: Form.

A. You're asking me an accounting question?

Q. No. I'm asking you -- accounting answers are not always black and white; fair to say?

MR. RAMSEY: Form.

A. I suppose no answer is black and white. Accountants have problems with how they do their job just like economists do.

Q. So let's just assume that for the sake of this hypothetical that this income and whether it's recorded all at once or over time is within a gray area and that both would be reasonable accounting choices.

A. Well, that sure doesn't fit the example that you gave me about a revenue. You better come up with another example if you accept that as a hypothetical.

Q. Let's say that it is revenue that is connected to a vendor with whom there is a separate contractual relationship and a number of different ties with it such that there are arguably -- I am getting way ahead of myself. Let's stop this line here. Is it fair to say that if accounting decisions are made that affect the numbers that go into your equation, that effects the ultimate valuation number that gets spit out?

MR. RAMSEY: Form, go ahead.

A. I am trying to understand what that question

means.

MR. RAMSEY: Are you saying if he's providing different numbers by accounting, it's going to change his number?

Q. I am just saying -- yeah. If a company restates its financials, for example, after a valuation date -- ?

A. Uh-uh.

Q. -- is that going to affect the ultimate number potentially in terms of your valuation?

A. So would the restatement -- if I had been provided with the restated numbers at the time they incorrectly provided their profit, would that affect the valuation? Sure.

Q. Now in the --

A. It could if it's material.

Q. When you're valuating a company on a particular date when a transaction occurred and trying to say that the transaction say, had fair value, do you use the financial numbers as they were believed to be at the time by the participants of the transaction, or do you use the real numbers if they thought the numbers were different?

MR. RAMSEY: Form.

Q. Just to be clear, so before a restatement occurs later.

A. So with regard to statement?
Q. Yes. Say you're using -- do you use the unrestated financials that are referenced at the time of the transaction or the restated financials?
A. You know, that's a difficult question to answer without the facts and circumstances surrounding it. Let me try to give you the best response I can. It is a principal in valuation that you're not allowed to peek forward. That has been upheld in a number of litigation cases. So, you know, as a general matter of what you're trying to do is put yourself in the position of someone at that particular point in time that has access to all relevant information about the asset, the company is object -- subject of the valuation. And as a general matter, it's called no peeking. I think that's kind of a silly phrase. That's how the courts have viewed it. And that's how people like Shannon Pratt talk about it. Bruner talks about it. Cornell talks about it. You're trying to understand how someone at that particular point in time with the information available to them would have valued that particular asset company. So if your hypothetical -- if your assumption is that they should have had that information, fine. Like a restatement. Restatement is one of those situations where look -- this is what should have been reported. It's not like it's

information that is new. It's that information that was there, but they incorrectly reported it. They fraudulently reported the information. So if the question is, well, what would the valuation had been had investors known the fraudulent information? Okay. Then you would reflect it. Then if the question is, well, what is the valuation given the information that's available to any given investor that's a willing buyer at that point in time? That's a different question.

Q. Right.

A. So that's the best way I can respond to your question is to kind of give you my full explanation.

Q. Right. So in this case, is it fair to say that you were looking at the valuation of Eber-Metro and Eber-Connecticut as it was understood by the people who were involved in the transaction at the time and not trying to second guess it based upon what they should have known based upon subsequent events?

MR. RAMSEY: Form. Go ahead.

A. Yes. I always try to not peek to events that happen after the valuation date. So I think you're talking about the valuation date of 2012.

Q. Yes.

A. So yes, I do. I do. You know, whether there were specific outcomes that happened after 2012, I try

really hard not to have that effect, you know, my opinion as to what the valuation was at 2012.

Q. In terms of a -- does that apply for both assets and liabilities?

A. Yes, as a general matter it does. You know, look, there are many circumstances in which after the valuation date -- I will give you a perfect example. I have been involved in a number of cases, appraisal actions in Delaware, involving pharmaceutical companies involving a drug that is it pending. Well, you know, the drug that is pending, you've got to take a particular view as to what that drug is going to yield in the future. And two years down the road it got FDA approval. Well, that changes the picture, but you didn't know it was going to get FDA approval at that particular point in time. So, you know, those are the kinds of things that you don't want to peek ahead and say well that was known by everybody. Yes, it was known that it would be get approval.

Q. So in that instance where there is the uncertainty about whether this future event will occur that would increase the likelihood of this drug going to market, was there a discount applied for the earlier uncertainty? How did that work?

A. Well, the cash flows where the cash flows.

And, you know, when we looked at cash flows that were projected by management at that particular point in time, those were the cash flows that we used, and it was a discounted cash flow analysis that I am referring to. And we used those cash flows because those were the cash flows available to management at that time and reflected what it reflected. We didn't adjust them.

Q. Okay. Now, this is a case where you did not have projections to rely on; is that right?

A. That's correct.

Q. Did you get any explanation as to why there were no projections provided to you?

A. No. I certainly got the information that there weren't. Not uncommon for small private companies. They don't spend a lot of time preparing forecasts in my experience as do large companies that have staff that do nothing but prepare budget forecasts. I don't prepare a budget forecast for my company.

Q. I am shocked.

A. It is shocking.

Q. So talking about liability.

A. Uh-huh.

Q. As a general matter, how is a contingent liability valued?

A. Well, again, you're kind of in the realm of

accounting here.

Q. In your analysis, how do you -- if you know something is a contingent liability --

A. Uh-huh.

Q. -- or maybe like a disputed liability, how do you end up figuring out what number to use?

A. Generally, if it's truly a contingent liability that you're waiting for some outcome, I kind of take the approach that accountants take. Is there a way to estimate first what the value is of this particular liability? Well, that's kind of generally going to be value of the lawsuit. What are they suing for and to look at that particular lawsuit and what the numbers represent. And the second piece is well, is it probable? Those two things get into the valuation. Again, the idea is to put yourself in the position of an investor at that particular point in time. If you're looking at a particular lawsuit and unpaid invoices for example, well, you've got to a particular number there. And what is the dispute? Why isn't it paid? If it's not paid because you don't have the money, then it's probable that liability exists.

Q. And if it's probable, do you include the full amount of the potential liability, or do you discount it?

A. It depends upon the liability, but, you know,

so, for example, for companies that I have been involved with where they provide their estimate of what that liability, is if there is a contention of what that liability is, and if it's listed as a contingent liability, then it's generally used -- that number is generally used in assessing the valuation of a firm.

Q. In this case -- turning to Page 12 of the report. You listed a number of liabilities for Eber-Metro and Eber Wine and Liquor?

A. Yes.

Q. And a lot of these numbers you got them from documents that were not existent at the time of the transaction in 2012, correct?

A. There were a couple that were past the transaction, but my view the numbers would have been known. It wasn't like it was hidden, but in the documentation I had, some of them were not too far away, but they did go past.

Q. Did you see any documentation or evidence regarding the probability of these liabilities -- the second component that you mentioned?

A. How probable they were?

Q. Yes.

A. I mean indirectly. I did read the complaint that Harris Beach filed. I think that's what you're

talking about -- the Harris Beach and Benderson Development. So these were two items that unlike a -- let's say unlike a product liability lawsuit or a class-action security lawsuit, these were specific invoices that were not paid. They were owed, but not paid. I didn't see any dispute that these were legitimate invoices. My take on this is that they were amounts that were for whatever reason there wasn't enough monies to be paid, and these guys were not happy about it and sued. So in my view when I looked at this, I said these are numbers that can be estimated. They are estimated. And it is probable that it exists.

Q. So for the Harris Beach litigation, would it have affected your analysis that these were just invoices that were not disputed if you learned that there was a counterclaim for malpractice?

A. No.

Q. Why not? Isn't that a dispute of the invoices?

A. It could be. I viewed this as probable.

Q. And did you discuss whether this was a probable liability with anyone as part of forming that conclusion?

A. Well, as I said, I did discuss these liabilities with the attorneys, with Wendy and Lester. And I was satisfied that these were legitimate liabilities of the company.

Q. Which company?
A. Well, in the case of --
Q. Let's say Harris Beach.
A. Harris Beach, both Metro and Wine and Liquor.
Q. Okay. And how did you conclude that this was a liability of both entities? Is that typical to have two entities? You know, I am not referring to the first two lines here where you mentioned one is a guarantor. The next four lines or three lines say Metro and Wine and Liquor.
A. So this duck tailed into the legal world and again, as I said before, I asked specifically as a legal matter because it just gets beyond my area of expertise to determine whether or not it is an obligation specifically of Wine and Liquor or Wine and Liquor and Metro. So that was something that I relied upon -- counsel.
Q. Okay. And this was an opinion from counsel now. Not one that had been provided at the time of the transaction?
A. No.
Q. Okay. So --
A. What their basis was I don't know.
Q. Okay. So wouldn't it be more important for your analysis to determine what the probability was

believed to be at the time of the transaction?

A. Well, that was the question posed, yes. You asked me if it was an opinion that they provided to me now, or if it was an opinion they provided in 2012. It was an opinion provided now but related to what was in existence in 2012.

Q. Okay. So you asked them legally which entities were on the hook for this; is that right?

A. That's correct.

Q. Did you ask anyone what management believed the probabilities were in terms of the entities being on the hook at that time on in 2012?

A. I don't know if I couched the question in that way. But I certainly did talk to Wendy and maybe just Wendy at that particular instance about these liabilities.

Q. And what did she tell you about that?

A. That these were real liabilities that the company had.

Q. Which company?

A. Well, again, for Harris Beach it was Metro Wine and Liquor.

Q. Right.

A. For Benderson it was wine and liquor.

Q. Now, you cite a number of documents here. You

read the Liebman report. You know that in his view none of those documents indicate any liability from Eber-Metro for the three times in the middle there.

A. Three times in the middle.

Q. Pension plan determination, Teamsters and the Harris Beach. Do you see anything different in those documents that indicate liability by Eber-Metro?

MR. RAMSEY: Object to form. That's really a legal question.

MR. BROOK: He cited these documents.

MR. RAMSEY: He also said he's relied on what was going to be a legal obligation. Go ahead with that objection, if you can answer.

A. I lost track of the question.

Q. Sure. Where you cited the reference documents, were you just citing that for the amount that you listed there and not for the obligor?

A. The citations are principally for the amount. So I can put some numbers down and do the quantification. But, you know, I do have some experience with pension obligations. I worked for the PBGC on a number of cases. So I have an understanding from an economic perspective of how investors perceive the liabilities owed to the PBGC or how the PBGC handles these things. And consequently I have a fairly good understanding of how

investors would account for these kind of obligations. So that -- and in fact, one of the courses I teach on merges and acquisitions take in account hidden liabilities. One has to do with pension obligations and how that affects the buyer's decision to move forward. So there is, you know, that layered on top of the legal determination is my experience and my understanding of how investors treat pension obligations.

Q. In this case, just so we're clear on everything, in this case the investor is also management of the company, right? So is it fair to say that -- would you agree with that statement here?

A. No. I mean, take a look at that first page of what I discussed in terms of what I am trying to accomplish here. The amount in which the property would change hands between the willing seller and buyer when neither is acting under compulsion and when both have reasonable knowledge of the relevant facts. So that's what I am trying to -- I know it's a bit esoteric, but that's kind of the general approach that I am trying to take here.

Q. But you understand that overall your opinion will be used to argue that the transfer of Eber-Metro to Alexbay was a transfer that was done for fair value; is that correct?

A. A transfer done for fair value. I am not sure I can agree with that. It's a transfer that was done consistent with the valuation I performed. I am valuing -- specifically valuing the entity, Eber-Connecticut. And in my opinion when you go up the chain, it yields a conclusion that the solvency -- that Eber-Metro and Eber Wine and Liquor are not solvent. So I am -- and yes, that supports the transaction, but I am not if you can find an opinion where I am opining on the transaction's fairness, I don't.

Q. Well, you picked the valuation date that you did because that was when the transaction was deemed commercially reasonable by a court, correct?

A. I didn't pick the valuation date. I was asked to perform a valuation as of that particular date.

Q. Understood. And your primary task though was to value Eber-Metro, not Eber-Connecticut?

MR. RAMSEY: Form.

A. Well, if you read my report, I specifically say that Eber-Connecticut is the only operating asset of Eber-Metro and Eber Wine and Liquor. So ultimately what I am valuing is the Eber-Connecticut valuation. From that valuation I subtract the liabilities for Eber-Metro and Eber Wine and Liquor. But I am not -- the only valuation I am doing of Eber Wine and Liquor is

predicated on my valuation of Connecticut.

Q. Right. I am just looking at your report Paragraph 1. I have been asked to provide an opinion regarding the market value of equity of the capital stock of Eber Brothers Wine and Liquor Metro, Inc. as of May 23, 2012.

A. Right.

Q. But in your view, the work you were focused on was just the Eber-Connecticut asset; is that right?

A. If you go further, I think I actually state this.

Q. I don't think there is a dispute here. I am going to you know, I guess, what I am trying to understand a little better, you know, if you're really saying you were focused on Eber-Connecticut, then that would make sense as to why you did not spend much of your report analyzing the liabilities involved here.

A. If you look at Paragraph 4, that puts my analysis in perspective. So it builds up from that valuation. That's the valuation.

Q. Right.

A. There is no operating asset at Metro. There is no operating asset at Wine and Liquor. The only operating asset is their ownership of Eber-Connecticut. So all the valuation work I did revolved around

Eber-Connecticut.

Q. Right. And then -- but you also valued Eber-Metro and Eber Wine and Liquor to the extent that you said it was they were insolvent no matter what the value of Eber-Connecticut was, right?

MR. RAMSEY: Form.

A. I wouldn't say it that way.

Q. No matter which valuation of yours you used for Eber-Connecticut, right?

A. My opinion is that the value of Eber-Connecticut was plus any other assets of Metro and Wine and Liquor were less than the liabilities.

Q. And do you understand why it is that I am drawing a distinction between Eber-Metro and Eber Brothers Wine and Liquor for the liabilities?

A. You know, I have a vague understanding that it's some kind of legal machination that's going on here. From my perspective as an economist, what I am looking at is what I think is relevant is what the heck is the value to these ultimate -- the beneficiaries of this trust. And in order to do that, you've got to go up the chain of command. Now, I understand there is some reason why it's important to assess Metro vis-à-vis Wine and Liquor. I don't pretend to understand that. It doesn't make economic sense to me. If it doesn't make economic sense,

then it must be some kind of legal stuff that's going on here that allows you to put a wedge between Wine and Liquor -- put a wedge between Wine and Liquor that ultimately puts a wedge between what the beneficiaries of the trust really own.

Q. Right. I think -- let me help you put it in perspective here. So maybe we can have a more productive discussion. So Lester Eber foreclosed on debt that was owned by Eber-Metro and guaranteed by Eber Wine and Liquor. And the company agreed to just give him Eber-Metro. And eliminate the debt to Eber-Metro too, as a result. So there is a legal question certainly as to whether that was done for fair value. Did Lester Eber, given his fiduciary obligations and his various roles, get more value by acquiring Eber-Metro through the amount of his loans? And so that's why drawing this line here is fairly significant. And do you understand at least the general fact patterns as I described it?

MR. RAMSEY: Form. Go ahead.

A. I am trying.

Q. So would you agree that if Eber-Metro did not have all of the liabilities for the pension and Harris Beach that you mentioned on this chart here, then the value of Eber-Metro would have been significantly higher than the 3.8 million dollars in debt that you listed here

that was owed to Lester Eber?

MR. RAMSEY: Form. Go ahead.

A. When you say, "did not have", what do you mean by that?

Q. Equal that it was not legally -- at the time of the transaction it was believed that Eber-Metro would not be liable for any of those debts.

A. So --

MR. CALIHAN: Objection.

Q. Let me sort of give you my take on this. And I mentioned to you before in one of your questions my experience. And again, putting myself in the position of willing buyer with knowledge of all the relevant facts. I know from experience that when you try -- when you try to play a shell game with a PBGC about who was the controlling entity and who owns what and where does this liability set, you run an awful risk. I have seen it firsthand. I worked in the case called White Consolidate. That is not unlike this where the company itself tried to say this is not -- the pension is not our liability. It belongs to -- and they sold the company and without the liabilities. And did not have enough money to pay those liabilities. And said, well PBGC, you pick up the rest. And the PBGC said nuts to you. We're going after you. This is fraudulent conveyance. Now,

that kind of knowledge is the kind of thing that any individual investor would reflect. So you can tell me well, you know, legally I've got a legal opinion that says this these pension obligations don't -- have nothing to do with Eber-Metro. And I can -- I feel fairly confident that had they sold Eber-Metro and the proceeds were not enough to cover the amount of that pension, either the PBGC is going to say you can't do this transaction or in the case that I have seen, they go after the buyer. And say well, now you bought this. Those liabilities are now on your books and you have more assets than what you just bought because you merged with Connecticut. So now you're on the hook to pay those. And, you know, again, these kinds of quote hidden liabilities are the kind of things that are affected in the ultimate purchase price even if one is -- if a purchase price is offered because they-re going -- a buyer is going to price protect themselves. They're not going to sit there and say, I got this great legal opinion that is not going to be a problem. I can separate the assets from this pension liability.

Q. But what if it actually happened in this case?

A. What if what actually happened?

Q. What if the buyer in this case, Alexbay because it bought it by giving up debt, actually believed that by

engaging in this transaction it would acquire Eber-Metro free and clear of pension obligations, would that be relevant to your analysis?

MR. RAMSEY: Form. Go ahead.

A. No. Again, if you go back to that paragraph, I am talking about a willing buyer aware of the facts. You seem to be focused on what is kind of referred to as specific investigators valuation as opposed to a fair market value. Again, we seem to be flipping over into the process as to why something was done and was it done for legitimate reasons. I am out of that. That's not my right here.

Q. You have not made any opinion on whether in this case because Lester Eber was a judiciary, his opinion of the valuation would be relevant to this litigation?

MR. RAMSEY: Form.

A. I don't know what the judge is going to consider relevant or not relevant. I am telling you what is relevant to my valuation is what I have done in this report. You know, whether Lester thought that he could skate on the PBGC, that's Lester's view. I am telling you as a measure of fair market value under the definition that I provided here an investor is going to take into account those obligations for sure.

Q. Are you sure that was the case in 2012? There has been a number of elements of the law recently.

A. My involvement going back before 2012 -- I mean look, I didn't -- I don't see anything that would contradict that. The PBGC, as far as I can see, fight like a dog when you try to hide, you know, or skirt and force the PBGC to pay for or to be the trustee for pension obligations. You know, you're in for a fight. I guarantee that.

Q. To what extent in connection with your work in this case did you become familiar with the fight that erupted between PBGC and the Eber entities?

A. Well, you know, I familiarized myself with some of the analysis that the PBGC did. And I think there was a document that I saw that provided some kind of -- I don't know. I guess call it a settlement of some kind. I don't know if that's the right legal term. I read those things.

Q. For this chart, the summary of liabilities, did you consider whether there was other obligors beyond Eber-Metro and Eber Wine and Liquor for any of these debts?

MR. RAMSEY: Form.

A. No. I don't specifically recall that.

Q. Would that affect your analysis of the

liabilities if there was a third obligor?

MR. RAMSEY: Form.

A. Possibly.

Q. So are you aware of that after the Alexbay transfer PBGC put a lien on Eber-Metro?

A. Yes.

Q. Are you aware that at the same time PBGC put a lien on Eber-Connecticut?

A. Yes. I think that is consistent with my view of how the PBGC operates. They take fraudulent conveyance very seriously. If they think you're trying to escape, they're going to certainly at least do that.

Q. So is it fair to say then that in addition to Eber-Metro and Eber Wine and Liquor in your opinion Eber-Connecticut was also an obligor for pension liability?

MR. RAMSEY: Form.

A. Certainly from an investor's perspective that's exactly what they are going to expect to happen.

Q. Does it affect your ultimate valuation analysis as to whether you put that liability in the Eber-Connecticut analysis or further up the chain?

A. So if the liabilities are at the Eber-Connecticut level, that would reduce valuation for Eber-Connecticut by the pension.

Q. Okay. But you did not do an analysis with running the numbers in that way; is that right?

A. No.

Q. Do you think that you perhaps should have?

MR. RAMSEY: Form.

A. Well, I don't think -- it doesn't matter. So I didn't -- it's kind of like a -- what is the point? The solvency opinion has to do with Eber-Metro and Eber Wine and Liquor. For I mean -- this gets back to what I said before about the economics of it. I am still a little fuzzy about why the hell it matters between Eber Wine and Liquor and Eber-Metro. But notwithstanding, to me it didn't really matter whether I put the liabilities of Connecticut as long as they are there with Eber-Metro when I am doing a solvency analysis of Eber-Metro that's what counts. So it's like what's the point.

Q. So would you include the liabilities at each level for the balance sheet of all three companies?

A. If the total liability is at Eber-Connecticut, then I've accounted for the liability relative to Eber-Metro. I netted it out against the Eber-Connecticut assets.

Q. How do you decide where that goes?

A. As I said, it's difference. Not a distinction. It doesn't matter to me. It's an economic matter. You

know, what is the point to make more paper? To say well if it's Eber-Connecticut then Eber-Connecticut value is lower, but then it's the same flip side that Eber-Metro has less operating assets. I am not sure I understand. I know it must make such kind of legal difference, but from my perspective, I just don't see what the point would be to do that analysis.

Q. We were talking about PBGC. What about the Teamsters liability? What is your basis for believing that is something -- that a reasonable investor would attribute to Eber-Metro?

A. Same basis. I think -- I know that there was a lawsuit over payment of the Harris Beach amount. And they sued for fraudulent conveyance.

Q. Do you know the timing of those lawsuits?

A. That would have been a post-valuation date.

Q. Right.

A. But my point is that from an investor's perspective, it's like day follows night. You start playing around with pension obligations whether it's the PBGC insured and pension from Teamsters, you are going to price protect yourself. And I think the same holds true with the other obligations as well.

Q. If a liability is contingent upon a creditor successfully pursuing a fraudulent conveyance lawsuit, is

it really in your opinion appropriate to include that as probable contingent liability?

A. That's not what I said.

Q. For Harris --

A. I said that day follows night. If you tried to separate the liabilities from the operating assets, you're going to get fraudulent conveyance. An investor is going to certainly reflect that. They will not say, "I will roll the dice on this." No. These are serious obligations. Particularly the PBGC and I would also include the Teamsters in that. And the only point I raise about the Harris Beach is that look, that's exactly what an investor is going to anticipate. You try to hide liabilities from the assets, and this is what you're going to get. An investor knows that. You just can't ignore that. You can't put blinders on and say this doesn't matter. Yes, it matters. It matters a lot. Particularly with a company for which the assets are less than the liabilities, it matters a whole hell of a lot.

MR. RAMSEY: Take another five, Brian.

(Whereupon, Exhibit Number 130 was marked for identification at this time.)

Q. Let's do one more document for now. So for the record, I am showing you what's been previously marked as Exhibit 73 and newly marked Exhibit 130. Have you seen

either of these documents before today?
A. Let me read it. I think I have seen Exhibit 74 before. It looks familiar. I am not sure I recollect 130.
Q. So looking at Exhibit 74 then, you see it is a confession of judgment signed by Wendy Eber on behalf of the Eber Brothers Wine and Liquor Corp. And that's as to the Teamsters liability?
A. Right.
Q. And that number matches within five cents the number you've got in your summary of liabilities, right?
A. Yes.
Q. Do you see that this confession of judgment only as to Eber Brothers Wine and Liquor Corp and not Eber-Metro?
A. So I think you're referring to the heading in there that says the defendant is Eber Wine and Liquor corporation.
Q. Yes.
A. Yes. It says Eber Wine and Liquor Corporation. It does not say Eber-Metro.
Q. Then looking at 130. That's the exhibit in front of you. Wendy Eber is explaining the reason for that. She says in the last paragraph, "I had modified the confession of judgment to reflect that it is against

Eber Brothers Wine and Liquor Corporation and not the Eber companies." Do you see that?

A. I see that.

Q. So is it your opinion that these documents reflecting that the liability was only against Eber Brothers Wine and Liquor Corp does not change your assessment that that liability belonged to Eber-Metro?

MR. RAMSEY: Form, legal opinion.

MR. CALIHAN: Objection to form.

A. Yeah. You keep saying belonged to. I am saying that an investor is going to take that into account. They are not going to put little compartments and say this is not the obligation of Metro. You know, what this says, it says. It doesn't alter my opinion as to how an investor is going to look at these kind of obligations.

Q. And by these kind of obligations, do you mean pension obligations specifically, or any debt belonging to the parent company that is transferring its subsidiary?

A. Most certainly it's going to reflect the pension, both the PBGC as well as the Teamsters, but yes. Clearly for a company that -- I say the company -- for the situation where the assets of Metro are such that obligations, even if you consider them up the line, can't

be covered, yes. It will. They just -- it just can't be ignored.

Q. Because of the likelihood of fraudulent conveyance?

A. That is a distinct possibility. Like I said, I think that any time you have a situation where you're selling assets and you're receiving a price that is less than the liabilities, that is exactly what you're going to encounter and an investor is going to know that.

Q. So focusing on Harris Beach, that's not a pension obligation. Does it change your conclusions in any way that at the time of the Alexbay transfer in 2012 the only party being sued by Harris Beach and that owed money to Harris Beach according to its engagement agreement was Eber Brothers Wine and Liquor?

MR. RAMSEY: Form. I will make the same objection. I think you're looking for a legal conclusion here.

A. Yeah. I mean -- look, I know that they did sue all the entities at some point for payment.

Q. I do want to be clear. I am not looking for a legal conclusion because your valuation is not based upon what the actual law was, right? What the actual liabilities were as determined by later courts, correct?

A. Fair enough.

Q. Just as if you're doing a valuation based upon what people knew at the time, they wouldn't be based upon what restated numbers were a year later, correct?

A. Fair enough.

Q. So in this instance, why isn't the determination of what the liabilities of Eber-Metro were something that should be based on what the understanding was at the time of management and the purchaser of what the liabilities of what Eber-Metro would be?

MR. RAMSEY: Form.

A. Because I am trying to understand how an investor, a willing buyer, is going to view this company. That is my analysis. I mean, I don't know how else to say that. I've said it five times now. And you keep trying to say, "Well, don't you want to value it the way that Wendy valued it?" No. That's not my task here. I mean, she did what she did. She wrote what she wrote. Her view is what it is. I am telling you how I am doing the valuation.

Q. And I am just -- I am not trying to be obtuse here. I'm trying to get a clear record. So the reasonable investor in your view would conclude that Eber-Metro would still be on the hook because upon transfer, Eber Wine and Liquor was left with insufficient assets to meet its debt; is that fair to say?

A. You're talking about all the items?
Q. Yes.
A. So number one, there is the legal determination that I said before.
Q. Right.
A. That I have been given. Number two, it makes absolutely sense to me from an economic perspective. That any investor is going to price protect themselves, particularly for a company that's in financial distress. And that I think there is no dispute. Certainly without question even Eber-Metro is in financial distress. And when you are a company in financial distress and you've got liabilities attached to those assets, boy, oh boy, you know, you just can't ignore that. And that's my opinion. That investor would not ignore that. And would not put it in compartments notwithstanding what Wendy thinks. It's interesting, but it doesn't affect my opinion.
Q. Okay. Let's take that break.
(Whereupon, there is a short recess in the proceedings.)
Q. Okay. So going to your report in general, you did five valuation analyses for Eber-Connecticut; is that correct?
A. Yes.

Q. But you did not offer an opinion on which of those valuation is most reliable or some combination of them to arrive at a final number, did you?

A. No. I provided a range of values from each of those five. The range of values results from each of those five measurements.

Q. Why didn't you offer an opinion on what the correct value should have been?

A. Well, in my view, the range that I developed and applied told me that this was an insolvent company.

Q. Not Eber-Connecticut though?

A. No. Up the chain, yes.

Q. Right. But as we have been suggesting, there are potential questions as to whether or not the numbers for the debt are correct or legally relevant or something like that.

MR. RAMSEY: Form.

Q. So in that instance, wouldn't it be important about to what the value of Eber-Connecticut is if the value would determine whether or not it was solvent -- the parent companies were solvent?

A. You mean a point estimate?

Q. Yes.

A. Well, if you want a point estimate. Just take the midpoint, that's fine.

Q. Why is that appropriate?

A. There are five measures of value. Each of them has problems. But these are the kinds of things -- not with understanding problems -- these are the kind of thing that investors are going to look at in formulating their opinion. If you're so inclined to only want to point an estimate, I mean, you know, in my view a reasonable range is more informative. I think it provides more information.

Q. Do you think --

MR. RAMSEY: Go ahead, finish your answer.

A. I think a reasonable range provides more information. It is un essence the sensitivity analysis or effective sensitivity analysis of what you were referring to earlier about well, is there uncertainly with numbers. Well, the more numbers you have, the more certain you are about what ultimately that range of value is.

Q. Do you consider all five methods to be equally reliable?

A. You know, so first I would say that these measurements are things that an investor would look at. Each of these methods has problems perhaps multiple problems. I think if you start with the offers or the transactions. So start with the Eder-Goodman

transaction. That has a significant problem because of the substantial rights. I've got two pages in my report talking about the substantial rights. Now, I try to do a conservative estimate as to what those rights are to come up with some value. But, look, for a company in financial distress in particular, the preferred stock aspect of it is going to be huge -- absolutely huge. So is that a problem? Yeah. I mean you try to adjust away from it. That is a problem. You know, that is one of those things that make that valuation uncertain. Southern offer to a lesser extent -- the Southern offer also has this right of first refusal that causes one to do again an adjusted valuation of the Southern offer.

Q. And the Southern offer wasn't actually accepted?

A. Look, you know, the Southern offer wasn't accepted, but I view that as a bona fide offer. And a bona fide offer is a reasonable thing to use in the analysis. So I wouldn't -- I am not going to discount it because it wasn't an actual transaction. I think it's still relevant.

Q. Can you please explain what you mean by bona fide offer?

A. Well, there were something -- I think it was like 14 amendments. It was far along. There was a lot

of paperwork involved -- due diligence.

Q. I mean in general what a bona fide offer is? Like how does something constitute that?

MR. RAMSEY: Form.

A. I draw a distinction between, you know, saying I have, you know, a preliminary offer of interest. That I wouldn't consider a bona fide offer. But if you've got a substantial amount of paperwork behind an offer with a lot of conditions and things that have been formulated, that to me is a bona fide offer. That's what I view anyway.

Q. Is a --

A. You want me to finish my answer? I was not done. So we can go back to any one you want to. So with regard to the Pole-Bridge Bowman offer, that to me has problems too. It's a transaction that I am not 100 percent comfortable with that being the measure of value. I don't know that I would -- I think that has problems as well.

Q. Why aren't you comfortable with it?

A. Well, I am concerned that it could possibly not be an arm-lengths transaction. I can't make a determination one way or the other, but it causes me concern.

Q. Why -- just to follow up on that, what about it

does not appear to be arm's-length?

MR. RAMSEY: Form.

A. I was concerned that the company was repurchased at the same price. It could be -- there could be explanations why that occurred, but the fact of that doesn't sound right to me.

Q. I am sorry. What do you mean by that?

A. It was unwound.

Q. Okay. The terms of the exercising how Wendy Eber ended up acquiring it?

A. Yes. I didn't see anything contemporaneous to the transaction itself that could indicate this. The ultimate unwinding caused me a little bit of questioning whether the transaction was a pristine transaction. And also problem -- the other problem I had with that is that there was a right of first refusal in that offer. So you have to adjust that. Now with regard to the farmers --

Q. I just want to stay on that one for a second, then we will jump to the other just so the transcript is -- in forming your opinion, were you aware of who were the owners of Pole-Bridge Bowman and Partners?

A. I know that it was a gentleman named Steurm was the principal.

Q. And what is your understanding of what his relationship was to the Ebers?

A. He was the consultant. My understanding he was a consultant. Maybe the term is workout consultant for companies in financial distress to get to them to work out of their distress. And I think he was a lawyer.

Q. And are you aware that the Ebers have said that he was their lawyer?

MR. RAMSEY: Form.

A. I know he was their consultant. I don't know that he gave legal opinions.

Q. Would it affect your assessment of whether this was an arm-length transaction if you found out that Glenn Steurm had an attorney/client relationship with the Ebers individually or with one of their companies?

A. No, I don't think so. I am not sure why that would affect my view of things whether he is providing consulting services or legal services. I am not sure that matters.

Q. Is a fiduciary relationship an arm-length relationship in your opinion?

MR. RAMSEY: Form.

A. Is a fiduciary relationship an arm's-length relationship? I am not sure what you mean by that.

Q. Do you understand the term fiduciary relationship?

A. The transaction -- because he is a fiduciary

that the transaction would not be arm's-length.

Q. I am asking if the fact that there is a fiduciary relationship between two individuals prevents that transaction for being characterized as an arm's-length transaction?

MR. RAMSEY: Form.

A. I would think it would be just the opposite. I think the fiduciary would have an obligation to make sure that whatever transaction took place was a fair market value unless I am missing something. You seem to have a different --

MR. RAMSEY: I think we're in the legal realm here.

Q. So the term arm-length, is that fair to say that is a term that is important to your valuation work?

A. Well, it is a shortcut to Page 1 of my report that talks about a willing buying and willing seller with knowledge of all relevant facts and no compulsion to buy or compulsion to sell. And so those are the things that in my view constitute an arm's-length transaction.

Q. So let me pose to you the hypothetical. If the transaction was entered into between a lawyer and his client to acquire an equity interest in a company and the lawyer did not actually want to buy that interest, but it was done for structural your purposes to benefit the

client, would you consider that to be an arm's-length transaction?

MR. RAMSEY: Form.

A. Structural purposes to -- that's way beyond -- I mean I don't know how to answer that question. Structural purposes to benefit --

Q. One simple thing. I will rephrase. If a person -- you refer to as a will buyer?

A. Yes.

Q. What did the buyer actually did not have any economic interest in acquiring the equity and he did it solely to fulfill his legal obligation to a client.

MR. RAMSEY: Form.

Q. Could you rely on that transaction to determine the value of the equity?

A. You're saying a fiduciary would have a legal obligation.

Q. I am not saying necessarily as a fiduciary. I am talking about a particular circumstance where a lawyer decides -- a lawyer specifically says, "I do not want to buy this, but I will do so if I have to. So that the sale can go through."

MR. RAMSEY: Form.

Q. Is that just impossible to believe?

A. It's a little hard to believe.

Q. I will show you a document.
A. Okay.
Q. All right. I will read for you a memo from Glenn Steurm, the owner of Pole-Bridge Bowman.
A. Uh-huh.
Q. To Pat Dalton, a lawyer for Wendy and Lester Eber and copying Wendy and Lester Eber dated May 26, 2010. That is I think two days before -- two to four days before the effective date of the Pole-Bridge Bowman transaction?
A. Okay.
Q. This memo states, "The current proposal is for a single-member LLC New-co to acquire the interest and that I be the only equity holder of the new LLC. Here are the terms that we discussed. One, New-co purchases a six percent equity interest in Connecticut for a secured non-recourse note in the amount of blank dollars. Wendy Eber has an exclusive right of first refusal to purchase the entire equity interest from New-co. If Ms. Eber does not exercise her right, then Metro has the next right of first refusal to purchase the entire equity interest. If Metro does not exercise its right, then Eder-Goodman has the final right of first refusal to purchase the stock. If neither Ms. Eber, Metro or Eder-Goodman elects their right, then New-co will be

required to retain its interest. The Ms. Eber will have a proxy to vote the equity interest held by New-co and a limited Power of Attorney. I have no pride of authorship in this outline. If we can find a different structure that works that would be better for me. Based on that memo, does that sound like a transaction that was negotiated at arm's-length?

MR. RAMSEY: Form.

A. I am trying to understand. How these items that you listed to me indicated that it's not arm-length.

Q. Those items actually aren't. I was mostly doing that because you don't have the document in front of you and I want to be fully transparent and read everything. I think the point I want to focus on is that you said -- I actually left out the first line. That's really important. Pat, as we discussed this morning, we need to identify an alternative purchaser of the six percent interest the Connecticut, LLC. The current proposal is for a single-member LLC. New-co to acquire the interest and that I be the only equity holder of the LLC. And then at the end he says if we can find a different structure that works that would be better for me.

A. So read that first sentence again?

Q. As we discussed this morning, we need to

identify at an alternative purchaser of the six percent interest in the Connecticut, LLC.

MR. RAMSEY: And what is the question.

Q. So the question is, based on the fact that Glenn Steurm is saying Wendy and Lester Eber and their lawyer -- that he does not want to actually buy the six percent, does that sound like an arm's-length transaction to you?

MR. RAMSEY: Form. I am not sure that's an accurate interpretation.

A. I am -- you're asking me to interpret this letter to mean that he does not want to buy this?

Q. I am asking you if someone were to conclude -- so this is a hypothetical now. If someone were to conclude that Glenn Steurm did not actually have an economic interest in purchasing the six percent equity that was sold to Pole-Bridge Bowman and Partners, would that affect your opinion of whether that was an arm's-length transaction?

A. It could. If there is no economic interest --

MR. RAMSEY: You've answered it. It could.

A. It could.

Q. Have you ever heard of a round-trip transaction?

A. Well, I know a round-trip transaction with

regard to a security. You buy and then you sell it.

Q. Are you familiar with a round-trip transaction in which it creates an appearance of economic substance, but in fact because money is going both ways there is no real economic substance to it?

A. Yes. I've actually offered opinions on this for the Department of Justice.

Q. And in the case of the Pole-Bridge Bowman transaction, it was funded by the note for the same purchase price. Do you see any similarities between that and a round-trip transaction?

MR. RAMSEY: Form.

A. I mean note in lieu of cash. I mean it's a still an asset on the balance sheet for the company. So I am not sure what you mean. That only cash counts?

Q. No. I am just saying if someone supposedly purchases equity in a company, but they receive the money to do that from the company itself such as a company receives no cash.

MR. RAMSEY: Form.

Q. Does that affect?

A. If the asset has value whether it's cash or not, it shouldn't matter.

Q. Well, okay.

A. If the buyer is providing a note saying, "I owe

you this money." There is a note. That's my obligation to you in lieu of giving cash. You seem to be drawing a distinction between the value of a note and the value of cash. Is that what you're saying?

Q. I am not necessarily drawing a distinction there. What I am saying is, you know, let's step back for a minute. For what reasons does a company -- a privately held company generally sell equity in a company that it holds?

A. You mean like a secondary offering?

Q. A secondary offering or where like in this case where Eber-Metro sold some of the interest it held in Eber-Connecticut?

A. Well, for a secondary offering they generally are trying to sell new shares to investors too, you know, for a variety of reasons. But, for example, make a capital investment of some kind. Selling shares, selling existing shares held by some other entity. You know, selling existing shares doesn't raise any new capital per se. Other than that, I don't know how to answer your question as a general matter.

Q. Did you review the critique of this transactions economic substance from Glenn Liebman?

A. Yes. My recollection is that he also had issues with regard to whether this was arm's-length.

Q. Right. And one of the things he pointed out was the interest rate on the note was only two percent when the company was at the time borrowing money from Lester Eber at 12.5 percent. Does that make sense to you?

MR. RAMSEY: Form.

A. You know, I have a hard time with that. When the company borrows money, it's paying. And it's the company credit that dictates the interest rate. So if a company is in financial distress and it wants to borrow money, it's likely that it's going to pay a high interest rate. Now, in this case, this is an asset that is being provided to the company. A company is not borrowing this. Unless I am missing something.

Q. Isn't the company loaning money?

A. Huh?

Q. The company is loaning money, is it not?

A. How? If it's an asset on the company's books -- it's giving shares to the LLC and the LLC is getting a note.

Q. Right. So it's giving up shares that were in a company a going concern, right? So that comes off the balance sheet?

A. Yes.

Q. And on the balance, it gets this nonrecourse

note?

A. Right.

Q. At the end of the day the only thing it can really get for that is just the shares back that is initially transferred if it were to foreclose on, right?

A. Where does it say that?

Q. It's a nonrecourse note, right?

A. They couldn't pay it.

Q. Would it matter whether Pole-Bridge Bowman had any other assets to you?

A. No. I am just questioning your -- you draw a conclusion that the only way -- you said that the only way is to get the shares back. And I never saw that written anywhere.

Q. I realize that. And that's where I was jumping ahead. I may have left out some facts from here. Do you know anything about Pole-Bridge Bowman and what kind of investments or businesses it was involved in?

A. I know it was an LLC. I know that Steurm was the principal of that LLC. Beyond that, I don't.

Q. Would it affect your assessment of whether this was an arm's-length deal to find out that Pole-Bridge Bowman was an entity that was created with no other assets solely for purposes of engaging in this transaction?

MR. RAMSEY: Form.
A. No. I don't think so.
Q. So if an entity has no other assets and it's a nonrecourse note, if the note isn't repaid, then isn't it true that the company's only recourse is to require the shares that it initially distributed?
A. Well, I mean, imagine that if one state of the world is where the value of the shares go up -- would the LLC just say, "Oh. Okay. Here is your shares back." Why wouldn't they just pay off the note and keep the shares? That makes economic sense to me. And you're dismissing that as a possibility.
Q. Well, isn't that what actually happened? The value of the company definitely went up once it become profitable, right?
A. It became profitable, but I can't say I am hypothesizing -- look, you said the only possible outcome is if they give the shares back. And I'm saying that doesn't make sense to me. I can imagine -- I am not saying it happened. But I can imagine the state of the world where it is in the economic interest to Steurm to say, "Hey, the values of these shares is increased 10 times what it was in 2010. Hell. Here is the money for the note. We will close this off. I will take the shares." Why not?

Q. Would it affect your assessment with whether the Pole-Bridge Bowman transaction was arm's-length if you were to learn that it was engaged in part to compensate Glenn Steurm for his services?

A. Well, I don't think that would be a sufficient, you know, indication to eliminate that as an indication of value.

Q. Would it require an adjustment at least?

MR. RAMSEY: Form.

A. Look, you know, you want to have an assessment as to whether it was a deal at fair market value. That's ultimately what you're talking about. Do stock transactions occur for parties that are consultants to particularly small firms? Yes. Does it mean that they are necessarily not an arm's-length transaction? Well, no. In fact, I can imagine, you know, that you would want to strike a deal at fair market value. So I don't know that I can agree that it's a de facto collusion that someone is being -- instead of providing cash, they are given stock in a company. I don't know that is necessarily a non-arm's-length transaction or to put differently that transaction took place at something other than fair market value based solely on that.

Q. Isn't it a reason to question the fair market value more though?

A. Well, it's certainly one of those indications that you are concerned about it. And that's what I said a minute ago, I am concerned. I think it is a transaction that an investor is going to look at. But with full knowledge at least of the information that I had, yes. I would say that there are problems with it. Just like there is problems with all these transactions. I mean everything has an issue. There is no question about that. So that's the best way I can answer your question. It's a concern. It's a problem, but all these metrics have problems. And that's why the range is important to get a sense as to whether there is some kind of assessment of valuation range each year that allows you to draw a conclusion.

Q. Just so I am clear, and correct me if I am wrong. In your opinion, the fact that the Pole-Bridge Bowman transaction was in part compensation to Glenn Steurm would not necessarily affect any of your calculations in terms of what the valuation would be based on the Pole-Bridge transaction?

A. No. Not in and of itself it would not.

Q. But just on the broader point, if a fact-finder were to conclude that a transaction was not conducted at arm's-length, would that mean in your view the transaction should be excluded from a valuation analysis?

MR. RAMSEY: Form.

A. Well, I think the question is whether the trier of fact would conclude that it's outside of it. Not so much a valuation expert. If a trier of fact concludes that it's not arm's-length transaction, could well be I am not going to consider this transaction. From my perspective, I guess I kind of take in a little different view of this. Like I said, the ultimate determination is whether it's a fair market value. And one of the things that is kind of interesting is whether or not the valuation is within the range of other evaluations. That's kind of interesting to me. That may not convince a trier of fact. The trier of fact says, "No. It's not arm's-length. I am not going to think about that." Okay. So be it. Cross it off your list. But for me -- and I think for an investor it is a data point of interest.

Q. For an investor, do you believe that would be appropriate to rely solely on the Pole-Bridge Bowman transaction as a basis for value?

A. If it was determined to be non-arm's-length?

Q. Either way. Just based on the facts that you know about the transaction where you question it, do you believe that it would be appropriate for an investor to base valuations solely on that transaction and not

consider any other valuation method?

MR. RAMSEY: Form. Go ahead.

A. The way I can answer that question is I don't know that I would look at any of these five alone and say that's the only thing you should look at or if that was the only thing available. Is it a precise, accurate measure of value? The only one that I really like that I think has the least amount of problems is the Prospect Beverage. That one -- I mean the problem with that is that it's 10 years old at that time of transaction. But, you know, look at the other dates. I mean the Eder-Goodman is four years old -- five years old.

Q. You're missing -- -

A. Six years old. Like I said before, so each of these has problems. You've got all of these right issues in many of these transactions. The Prospect, is in my view, one of the tightest comparable transactions that I have encountered in doing valuations.

Q. Is it a coincidence that is the transaction that results in by far the lowest value for Eber-Connecticut?

MR. RAMSEY: Form.

A. It is a coincidence. It turns out that way. But maybe that is not a coincidence. Maybe that really reflects what the value of what Eber-Connecticut was.

And that the value that I ascribed to the rights for let's say Eder-Goodman and Southern are just way too low.

Q. Did you perform any sort of sanity checks on that given that is so far away from what the actual transactions involving Eber-Connecticut were?

A. I am not sure what you mean.

MR. CALIHAN: Objection to form.

A. It is what it is. It depicts exactly what the valuations are from each of these metrics.

Q. Isn't it important to perform a sanity check on each of these valuation metrics that you arrive at? You mentioned that earlier today.

A. The numbers are here. What is it in addition to this that you think is necessary that I am not understanding?

Q. Well, does it seem rational to you that the company would be worth under $700,000 for its equity just a few years after it was purchased for 21.6 million dollars?

MR. RAMSEY: Form.

A. Sure, sure. Valuations change all the time.

MR. RAMSEY: You've answered the question.

A. Look at Hewlett Packard. They were worth billions. How much are they worth now?

Q. That earlier transaction was closer in time to

the Prospect Beverage transaction, right? 2005 Slocum acquisition for 21.6 million dollars. That was much closer in time than Prospect Beverages, right?

A. Yes.

Q. And did you try to see whether using the Prospect Beverages ratios matched up with the price that was paid for Slocum in 2005 as a sanity check?

A. I don't have financials for Slocum in 2005. What I do know is that there are similarities between what the state of affairs -- good similarities for what the state of affairs was for Eber-Connecticut in 2012 and what Prospect looked like in 2010. You know, I talk about that. The market cap was very close. The amount of revenues was close. It was negative EBITDA, which is what the position of Eber-Connecticut was in. They are a distributor of alcoholic beverages. That's pretty darn good. The only concern is the time value. And you will note because of the time difference here there is deduction that is applied to the revenue ratio to account for the general change in the market conditions. Well, look. Even if you eliminate that adjustment, you know, you're still getting values of Eber-Connecticut, you know, maybe two and a half -- three million. So, you know, the one problem -- even if you transported that ratio to today or to 2012, it's still not a very big

number. And the characteristics in my view are quite tight.

Q. I am going to do a couple more things on Prospect Beverages before we go to Farmers. Looking at Exhibit C4. You're missing a lot of numbers there for the total price, premium for additional rights, percentage ownership, things like that. Why is that?

MR. CALIHAN: Brian, could you repeat that question, please? I lost you.

Q. I was asking why it is that there are a number of line items for which there is missing information, such as total price for the transaction?

MR. CALIHAN: You referred to a page number.

Q. Sorry. Exhibit C4 in Exhibit in the Torchio report.

A. Because I was able to obtain the enterprise value and the recent revenue figures from I believe it's Capital IQ.

Q. How do you know that those numbers are reliable when you don't have the price for the transactions?

A. They are as reliable as Capital IQ is reliable. So if you're asking me whether I am relying on Capital IQ, I am.

Q. And did you attempt to find out why Capital IQ didn't have data on the total price?

A. No.
Q. Did you look at the SCC filings in connection with this acquisition?
A. I don't recollect.
Q. Are you aware that this was not a complete asset sale? It was more of a merger?
A. Yes.
Q. And so Prospect Beverages ended up with four seats on the new company for example?
A. Yes.
Q. Okay. Did that factor into your analysis?
A. No.
Q. Aren't those additional rights that need to be accounted for?
A. No. You're effectively merging your companies together. That's a controlled transaction. I don't draw a distinction there.
Q. So when do you -- so if an acquisition involves additional rights, when do you decide to include that in value or not?
A. This involved a sale of control, which is even, you know, considering the fact that the ROFR that existed as of 2012 was a significant deterrent of sell control, I am still reflecting that the value of control in this transaction. So this is not a minority interest

valuation. This is a valuation of control. You're taking this company and you're merging it with your company. That's a control transaction.

Q. Were you conducting a minority interest valuation in this case?

A. No, I did not. But if you're going to assess whether what the price would be to disburse investors, then you would have to take into account what the minority interest is or, put more specifically what the marketability discount it is.

Q. Are you aware that under my New York law, when you do value a minority interest in a company, an appraisal valuation expert is not permitted to make any discounts for lack of control?

MR. RAMSEY: Form. You're asking for a legal conclusion.

Q. I am asking if he is aware in that work.

A. In the context of a merger when you're assessing fair value for a company, you are not allowed to take discounts for a minority interest or discounts for marketability.

Q. And would that be the case also in assessing a freeze-out merger?

A. Yes.

Q. Did you make those discounts in this case?

A. No.

Q. By removing the controlled premium or right of first refusal premium, which has some similarities to it, didn't you effectively make those discounts?

MR. RAMSEY: Form.

A. No. That's not true. What I am assessing is the ability for the company to get a controlled premium. To the extent there is a merger and the merger provides a controlled premium and you're trying to assess fair value, you're assessing that fair value relative to what they got. How much of that controlled premium is being paid? And what fraction of that controlled premium is part of fair value? And what I am saying here is different. What I am saying here is that it's highly unlikely that there would be a controlled premium paid given the existence of the ROFR.

Q. And you say that even though you're aware of what happened in 2012 with the transfer of Eber-Metro?

MR. RAMSEY: Form.

A. I don't understand that.

Q. Well, was it your understanding that the ROFR was implicated of the transfer to Eber-Metro?

A. Was implicated?

Q. Did Eder-Goodman have a right to try to acquire it instead of Alexbay?

A. I don't know.
Q. Okay. I will represent to you for the sake of our, you know, discussion here hypothetical-type-thing since I know you don't have time to look it at and you're not a lawyer. Assume that Eber-Metro and its control was not restricted at all by the Eder-Goodman transaction. That they did not cover for that contingency while Eber-Metro could not sell its units in Eber-Connecticut, it could sell itself and with it control of Eber-Connecticut bypassing all of Eder-Goodman's rights. Do you follow me?
A. Okay.
Q. And in that circumstance, shouldn't Eber-Metro and its interest in Eber-Connecticut receive a control premium?
MR. RAMSEY: Form. Go ahead.
A. Let me make sure I understand this. You're saying that the ROFR in Eber-Connecticut was relevant or nonbinding to the sale of Eber-Metro?
Q. Correct. There was no change of control clause in there like you would see in certain contracts to trigger a, you know, a bonus or gold parachute or something. They did not include that in the document.
A. Uh-huh.
Q. So taking that representation that that's the

lay of the land, would that affect your valuation here?
A. I have to think about that. My natural reaction is how is that going to Eber-Connecticut?
Q. What do you mean?
A. Well, if you sell Eber-Metro, who is still controlling Eber-Connecticut? What about the decisions at the level of the operating company?
Q. Eber-Metro continues to be the legal entity that controls it.
A. I get that. I understand that. But when it comes to making decisions about Eber-Connecticut the actual operations of that company and the ability to merge that company with, you know, another large distribution company -- I mean, look, I am not a lawyer. I can't -- it sounds strange to me that you could effectively merge the assets -- merge the company of Eber-Connecticut with another company.
Q. By selling its parent?
A. By selling its parent.
Q. That's exactly what happened in 2012 though, isn't it?
MR. RAMSEY: Form.
Q. It went from Eber Wine and Liquor to Alexbay. Abdomen.
A. What operating company? What operating company

merged with them?

Q. I'm not suggesting it's necessarily an operating company.

A. That's the point. Let me explain something to you because I think you don't understand the concept of what a control premium constitutes.

Q. Okay. Explain it to me.

A. Look, a control premium is not something that is going to be given on high. This is a transaction where there must be a control premium. A control premium comes from the fact that by combining assets with another company that you can have synergies. Synergies means one plus one equals three. Are you with me?

Q. I am with you so far.

A. All right. So now -- and what happens in a merger is that when you've got synergies when you can take that company and you can do something different with it by combining it with other assets and create synergies. You take some of that synergies and you pay the target above and beyond its stand-alone value. That part of the synergies that's paid to the company above and beyond its stand-alone value, that's what's referred to as the control premium. Let me finish. Now, if you got a situation where you're trying to get a control premium what are you going to look for? Who is going to

pay the control premium? It's going to be a company that when you combine it -- when you put those assets together it creates synergies. Well, there is no synergies created by Alexbay. That's just a shell game. And what the ROFR is intended to prevent -- effectively prevent from Eder-Goodman's standpoint is they don't want these assets to merger with, for example, Southern or any other distribution to get a leg in. They are using that as a means of preventing or almost de facto establishing a quasi-monopoly in order to prevent that from happening. And I didn't see anything in transaction with Alexbay that would put -- that would create a control premium. There is no synergies involved that would constitute a control premium.

Q. I thought you were not focusing on these particular parties, right? It doesn't matter that it's Alexbay. It could be any reasonable investor. Which is it? Is it Alexbay?

A. Any reasonable investor. That's exactly right.

Q. Forget Alexbay. We're talking about any reasonable -- say it's Carol Icon. He's not in the business yet, but he loves to get into companies and pay control premium. You with me so far?

A. Yes.

Q. You are you telling me he wouldn't pay a

control premium for this?
A. Only if he could combine it. And I can't understand how with the ROFR that he could combine the asset of Eber-Connecticut. That seems like it would be directly ---
Q. Isn't it fair to say that synergies is only one way in which a control premium can come about? And do you agree with that much or no?
A. No.
Q. Is it fair to say that a control premium is paid where a person believed -- the buyer believes he can manage the company more effectively?
A. That's fine. You can refer to that as a synergy.
Q. Okay. So they aren't necessarily in the business themselves already active, correct?
A. Fine.
Q. And so what you've seen from the Eber-Connecticut financials, is it fair to say that the reasonable investor can look at that and go almost anyone can manage that company better?
A. No.
Q. Do you have any reason to believe that it was well managed?
MR. RAMSEY: Form.

A. I mean I have no reason to believe it wasn't managed.
Q. Right.
A. Operating the company for decades as far as I can remember. No, I don't see that as a plausible scenario.
Q. They have been run out of business in New York, right?
A. Yes.
Q. And then in Connecticut this company that had been making money was then losing money for six years in a row?
A. Yes.
Q. Do you think a reasonable investor would think that company has been well managed?
MR. RAMSEY: Form.
A. Sure. That in and of itself is not to dictate that it's poorly managed. I mean there is exogenous events -- competition. That just doesn't follow.
Q. So let's say -- I am not saying necessarily, but let me rephrase then. Do you think that a reasonable investor could conclude that the company was not well managed based on the facts that I just described?
A. No.
MR. CALIHAN: Form.

MR. RAMSEY: Form.
A. Could or would?
Q. Could.
A. You can draw any kind possibilities, yes.
Q. We're focused only on reasonable possibilities?
A. Then I am not sure that it was reasonable. I think that the facts about the degree of competition that occurred is going to dictate whether or not any other can manage this any better.
MR. RAMSEY: Whenever you get to a good breaking point, but the lunch is here.
Q. Almost there. Let me just finish up this train of thought. Just so we're clear then, you can't foresee any circumstances in which you think a control premium would apply to Eber-Metro's controlling interest in Eber-Connecticut; is that right?
A. The essence of the control premium is going to come about by someone who is able to combine assets. And that's exactly what the ROFR is trying to prevent. And even -- I mean, look, even if you thought you could run it better, you're not going to pay for something that you're not going to get value out of. And if you're not going to significantly improve the valuation beyond the stand-alone value, you're not going to pay a control premium. That's just economics. That's all I am saying.

The big synergies and consequently the control premium come about by combining, let's say, Eber-Connecticut with Southern. And Southern wanted in Connecticut. And that could be a way for them to get in. And this is exactly what the ROFR is meant to prevent.

Q. Right. So what if as a matter of law to conclude that the ROFR did not prevent Southern in combining with or acquiring Eber-Metro and control of Eber-Connecticut, would that affect your opinion on the valuation?

MR. RAMSEY: Form.

A. It could have an effect. I would have to think about what -- what does that mean as a matter of law. Is that definitive --

Q. In determining the contract.

A. That an investor would completely know that that's the case. That the ROFR that exists at the level could not be used to prevent the merger of assets. I don't know. You know, it's again -- it is a legal point. And if I am told that no -- Eder-Goodman screwed up. They had a loophole they didn't think about. This could be accomplished through this loophole. Okay.

Q. Let's take our lunch break.

(Whereupon, there is a short recess in the proceedings.)

Q. So still talking a little bit about Prospect Beverages, which you said you think is the best of the different --

A. I said I liked it, yes.

Q. You liked it the best. You know what the literature says the best of the five would be?

A. The literature?

Q. Yes.

MR. RAMSEY: Form.

Q. The literature in your field of valuation.

MR. RAMSEY: Literature of what? I missed the last part.

Q. In your field of valuation.

A. Well, I mean it's all based on facts and circumstances. I don't know whether literature is going to say definitively which metric is the best in all circumstances. As I said in my report, you know, if you have the legitimate transaction close in time, that's a very good indication of value.

Q. Legitimate transaction for the company in question?

A. For stock in the company. That's a good one. Comparables are good, but comparables can be, you know, disputed about whether it's comparable enough. That's with regard to the training comps. Ideally you would

like to find a company that is the exact perfect mirror image of the company you're trying to value. That never occurs. So you're left with trying to find enough sufficient characteristics that the same microeconomics that drive -- are comparable of driving your company. And if that exists then there is a pretty good chance that is a decent measure. But more often than not, what the literature is going to suggest is that you have a number of different valuations. Relying on one is chancy. And the more you have, the better you get a fair assessment as to what the value of the company is.

Q. Now, in terms of Prospect Beverages, did you see the microeconomics as being -- let me step back and ask that. When you say the microeconomics are comparable, what are the degrees of comparability and how do you factor in the differences to weigh those? Just walk me through the process when you look at --

A. So going to start SIC code. Let me look at the SIC code and see who is the SIC code that encompasses the company in question. That's problematic because many companies that have a SIC code --

Q. Let's define SIC code for the record?

A. Standard industrial classification. And so now you're kind of looking at maybe a four-digit SIC code or maybe look at individual companies in that SIC code and

try to understand based upon the general characteristics of the company whether there is a good fit or not a good fit. So if you're looking at a company that is publiclytraded or is a transaction, you know, you're going to look for the kind of characteristics that generally dictate risk and reward in that particular industry or that SIC segment. So the size of the company matters. So, you know, the market capitalization matters. The growth -- the historic growth of a company matters. Probability matters. The line of business can also be a relevant factor. Those are the, you know, generally the kinds of things that one looks at. Now, with that said I taught and I have been involved in a number of transactions. And all those transactions the investment bankers use and rely on comparable transactions, comparable trading multiples. And notwithstanding that you're never going to find a pure play that matches your company exactly. So you try as best you can in understanding that from an investor's perspective what you're looking at is effectively risk and reward. You're trying to understand the growth rate and the riskiness of the company is similar. And those characteristics that I talked about generally go to those characteristics. So that's kind of what you're going to focus on. And then secondary is whether the same kinds

of general economic factors that dictate the expected growth are similar. So, for example, you know, while not a close fit looking at distribution companies to the extent there are no pure play liquor distribution companies, it's reasonable. Is it great? No. It's one the problems with the trading comp that I am using. It's not a tight condition. There are a similarities with regard to the economics, but not great. So can you rely on that solely? Probably not.

Q. What were the products that Prospect Beverages distributed?

A. I believe it was mostly beer. I think Pabst maybe.

Q. Pabst. And some malt liquor as well?

MR. RAMSEY: My favorite brand.

Q. I am not from Rochester. No offense. And what do you see as comparable about that to Wine and Liquor?

A. Well, look, I saw what Mr. Liebman said that to me is a difference without substance. If you're asking any investment banker, would you think it's comparable to look at a distribution company that sells beer and a distribution company that sells wine? And I would guarantee you that ten out of ten would say yes, that's comparable. Are they exact matches? Is it a mirror image? No. But the economics are the same. Not exactly

the same, but they are similar enough.

Q. Is it true in New York?

A. Pardon?

Q. Did you adjust that view for the geographic locations?

A. That's the other thing. I mean, come on. In other words, you know, if I took what Mr. Liebman is saying literally I would have to find a company that distributes wine in Connecticut and that sells Spanish wines -- Australian wines. I mean, come on. That is such a straw man. That I mean -- it just to me that was ridiculous. I have to say.

Q. Didn't you have a comparable like that?

A. Did I have a comparable like what?

Q. Eber-Connecticut had gone through a couple of prior transactions it was engaged in and it had those similarities because it was still in Connecticut and doing those sorts of thing.

A. I did look at those transactions.

Q. Right. So isn't the point that given the distinctions and the difficulty in finding other comparables, given the legal landscape for the regulations of wine and liquor, isn't it better to use the comparables of the actual prior transactions for the company in this instance because everything else is just

too different and too many different variables?

MR. RAMSEY: Form.

A. No. I think you mischaracterized and misinterpreted what I just said. I think these differences that are being put forward, that it does business in Connecticut and not New York, that it sells wine and not beer, those are differences without distinction. From an investor's perspective is that really going to matter? Does that change the riskiness? Does that change the potential growth rate? I think that's just -- like I said, it's a fallacy. It's a straw man. If you're asking me --

Q. Have you actually asked any business people about that? You're saying if you asked a business person or an investor, you know, about the difference they wouldn't see one. Have you actually asked anyone that or are you just speculating?

MR. RAMSEY: Form.

A. It's not speculation. It's by experience.

Q. Have you actually asked anyone that?

A. No.

Q. Do you see a difference between beer distribution and wine and liquor distribution?

A. Of course there is a difference. But it's a difference without a distinction.

Q. Have you asked anyone that question? My question is, have you asked anyone else that question?
A. No.
Q. Why not?
A. I don't have to. I know how to do valuations. I know how to look at comparable companies. I have been doing it for 30 years. I don't have to ask anybody. That's my belief. That's what I am going to. That's taught in school. That's what investment bankers do all the time in merges. That's what I am using.
Q. Have you ever valued a power company or energy company?
A. Yes.
Q. What kind of energy company was that?
A. It was an electric and generation and gas distribution company.
Q. How did it generate electricity?
A. They had coal fire power plants. They had nuclear power plants and gas.
Q. And were the -- did you value the different components of that separately nuclear from coal?
A. The different generations of electricity?
Q. Yes.
A. No.
Q. Do you believe that a nuclear company -- say a

company is just doing nuclear and another company is burning coal. Do you believe that those two companies would be deemed comparable?

A. I would include, yes. You got to take into account that there are different characteristics, but in terms of developing a range of values, yeah. I would include them.

Q. Riskiness factors are very different, correct?

MR. RAMSEY: Form.

A. There is risk for a variety of different reasons. Nuclear plants have risk because the risk of regularity control is quite substantial. Although small, the risk of something, a catastrophe happening. Coal fire plants have risk because you're going to have environmental regulations that you've got to adhere to that make those plants very costly. And can result in some substantial, you know, uncertainty about the future. So there are differences in risk characteristics, but there are risks that cross all those kinds of powers plants.

Q. So the difference in regularity control is something that has to be taken into consideration; is that fair to say?

A. No. What I said is that the riskiness of each of those things can be narrowed down to where it comes

from. And the riskiness, it permeates the industry itself.

Q. Did you, for purposes of this case, familiarize yourself with the Connecticut franchise laws for liquor and wine distributors?

A. You know, I have some recollection. I didn't read anything. I have some recollection of discussing some of that with either Wendy or Lester?

Q. And what did they tell you about that?

A. I don't recall specifically.

Q. If you don't recall specifically, do you recall what you concluded based on what they told you?

A. Well, that like many states in the northeast there is a lot of regulation involving liquor sales. The principal discussion I remember having is what would happen under a liquidation scenario. And that there would be limited buyers for inventory under a liquidation scenario due primary to the restrictions in the Connecticut law. But there were similar restrictions in the other states, particularly those states in the northeast.

Q. Did you discuss with them how those same laws also create barriers and entry for competitors?

MR. RAMSEY: Form.

A. You know, I do remember talking about that. I

remember also reading something. I think it might have been in Lester's affidavit about the differential barriers to entry. And I think it was concerning the notion of an exclusive distributorship and that vague recollection about ways in which other distributors can become distributors of the products that you're carrying.

Q. Okay. So is it fair to say that barriers for entry for competitors is something -- if there are such barriers, that is something that reduces the riskiness of the business?

A. It's possible.

Q. I will show you a business plan from December 2009 from Eber-Connecticut that's been previously marked as Exhibit 65. And I want to draw your attention to the second to last paragraph there.

A. Okay. I see that.

Q. Is that consistent with what Wendy and Lester told you?

A. Well, let me -- so I am reading from the affidavit from Lester that the Connecticut laws do not insulate a distributor from the risk of losing exclusive right or to sell wine product in Connecticut. Rather at most they prevented a distributor from being completely excluded from the sale of a wine product. Although, Connecticut law prevents a supplier from completely

terminating its relationship with the distributor -- which I think what this paragraph says -- without good cause, a supplier may still dual -- in quotes -- dual a distributor at any time. Meaning that the supplier can sell to a new preferred distributor in addition to the original distributor. Thus the original distributor can be deprived of the benefit of being an exclusive distributor of a product within Connecticut without any protection under the franchise law. In my experience, the new preferred distributor typically ends up selling the majority of the supplier's particular product in Connecticut since the new preferred distributor receives marketing support and programming that is not offered to the original distributor. So I think that paragraph is consistent with what I just read, but also the paragraph provides additional information that is not reflected in that paragraph.

Q. Okay. But combining what you just read with what Lester and Wendy just told you about the limited number of people out there, it's fair to say that the competitive pressures facing Eber-Connecticut given Connecticut's regulations were lower than they would be for a similar company in a state that did not have those franchise laws protecting it?

MR. RAMSEY: Form.

A. I mean there is some protection, but based upon what I just read, it's minimal. If you can basically skirt those laws by having new supplier and while they have to still -- sorry -- new distributor -- and while the supplier still has to sell to you under the law, if they have taken away your business -- it's really pretty much a hollow guarantee. I mean it's -- you can lose your business. And according to this article, it's not uncommon.

Q. Well, in a case of -- do you know how many distributors of wine and liquor there were at the time of the transfer?

A. No.

Q. Would that be important information for you to know?

A. No.

Q. So if it was just Eber-Goodman and Eber Brothers. And Eber-Goodman was an investor in this company and subject to all sorts of restrictions in terms of poaching their different customers, you're saying that wouldn't affect your opinion?

MR. RAMSEY: Form.

A. It didn't factor into my opinion and no. I mean, you set up very extreme examples that I don't think exist in order to try to get me to answer to a

hypothetical that is outrageously simplified.

Q. It's more I am testing the integrity of your opinion.

A. But the integrity of my opinion is based on reality. Not upon some figment of the hypothetical world where one distributor exists in the State of Connecticut. It didn't factor into my opinion. If ultimately at trial you think it is a factor, bring it up and we will discuss it. And let the court decide.

Q. In New York is beer sold in the same place as wine and liquor to customers?

A. No.

Q. Did that affect your opinion at all?

A. It did not factor into my opinion.

Q. Have you ever worked with companies that are involved in retail sales of beer?

A. Retail sales of beer. So conjunctively I have been involved in valuations of grocery stores that sell beer. And I have been in valuations of producers of beer. Close as they come.

Q. So is it fair to say the customer profile for a beer distributor is very different than the customer profile for a wine and liquor distributor in the State of New York?

MR. RAMSEY: Form.

A. I don't know about very different.

Q. The same stores can't sell the same things, right?

A. That's true. Ultimately there is a drive demand for alcohol. The demand comes from customers and that's the key. That's where the sales come from. If the customers aren't buying as a distributor, you're not making sales. So the economic model -- it starts for the retail customer who is buying alcohol. And what drives those customers' desire for alcohol. And so that's what's driving. And whether you're selling to a grocery or a wine or liquor store, it's still the same derived demand that is the ultimate microeconomic factors that are driving sales and just driving the value to the distributor.

Q. Are you aware of -- well, if you dealt with grocery stores did you encounter -- what kind of size of grocery store chain are we talking about here? National? Regional?

A. I think it was regional. It was stores owned by the Half Brothers. I think it was down in Virginia or D.C.

Q. And did they operate largely on generating profits through vendor credits?

A. I don't recall.

Q. Are you familiar with how vendor credits work in the retail industry?

A. I don't remember.

Q. And do you know how purchase orders are placed by wine and liquor companies in New York?

A. No.

Q. So in your report you noted that generally forward projections provide a better way of valuating a company than past results; is that a correct statement?

A. Well, let me put a fine point on it. A company valuation is predicated on the present value of future cash flows to the extent that the history provides you with a yardstick to estimate future cash flows. That's the importance of the historical numbers.

Q. But if history -- are there circumstances in which history does not provide a useful yardstick?

A. Sure.

Q. Like what?

A. Well, like a complete shift in the business of a company. You getting into something different. You develop a new product. Could be all kinds of reasons that history is not an indication of the future.

Q. And so, for example, if a company had recently hired a strategic consultant and changed the focus of its business, is that one reason why historical results would

be a less reliable yardstick?
MR. RAMSEY: Form.
A. Well, I don't know about a consultant but clearly.
Q. Following your consultant's advice.
A. If you're changing your business, if you're doing something different than you did historically you could -- it could alter your expected growth in the company. Different products of course have different expected growth rates or potential growth rates.
Q. In a valuation analysis, if a company doesn't have its own projections at the time of the transaction, have you ever attempted to create projections based upon what historical cash flows have been?
A. It's been my practice not to do that. I think it entails speculation. And effectively what your -- the most I have done is to try to assess what the expected growth rate is. But I generally do not when there are no projections, I generally do not try to come up with my own projections.
Q. In those circumstances is it relevant to the analysis if management believes, without putting a particular number on it, that the business is turning around and will be profitable in the new future?
A. I think management expectations are always

consideration I would say.

Q. And what is your understanding of what management's expectations were at the time of the Alexbay transfer in the terms of the business returning to profitability?

A. My recollection is that there was no immediate return of profitability and no substantial change in the growth rate from the historical numbers.

Q. And where did you get that understanding?

A. Discussing it with Wendy.

Q. Okay. And if Wendy made different statements at the time and around the transaction such as to banks expressing her optimism in the business improving in the future, would you consider those statements more reliable or statements in further interest of her litigation?

MR. RAMSEY: Form.

A. Yeah. I think there are -- look, my experience with providing information to banks, you're always presenting an optimistic case because you want funding. And you're not going to say that it looks like we're going down the tube. Why would you want to give us any money? Would I weigh those things? Sure. I consider those two. Those are equally important.

Q. So the context in which someone makes a statement about management expectations is relevant?

MR. RAMSEY: Form.
A. It's relevant.
Q. Put a spin on it for whatever reason, fair to say?
A. Sure.
Q. And much more so than historical earnings it's easier for management to play with the numbers a little bit when it comes to forward projections without doing anything that might get them sued for security fraud; is that fair to say?
MR. CROWE: Form.
A. I don't know what you mean.
Q. In terms of taking a more aggressive position than what the projections are.
A. Behavior being what it is. You know, certainly if you're banker and you're being presented with projections and not projections, but with some kind of, you know, qualitative view as to what you think is going to happen. You take it into account. I hear you. But the historic numbers don't bear that out. What is it that you're going to do differently that is going to create better profits? I mean -- look, to the extent that something has positive valuation what is baked into that is profits in the future. There can't be a positive valuation if it's never expected to generate profits.

Q. In the case of Eber-Connecticut although it had not yet turned profitable, it's correct that the company was reducing its losses consistently every year as of 2012, right?

A. There was big losses that I occurred in the maybe 2008/2009 time frame in the recession. But it was still negative as of 2012. And I think it stayed negative until I don't know, 2015 or 2016 is my recollection.

Q. But the overall trend was going towards positive, correct?

MR. RAMSEY: Form.

A. Well, let's take a look. Okay. So I am looking at Paragraph 50 that shows the financials or revenue profit from operations and EBITDA from 2007 to 2012. So the first line revenue indicates that the growth is actually somewhat flat or declining from 2007. The profitability from operations that is pretty volatile. It's negative $656,000 in 2007. And then it's improved slightly in 2008 to $140,000 negative. But then in 2009 -- I think this is what I was referring to -- in 2009 it's minus 2.3 million. And 2010 it is $920,000 negative. And then we're kind of back to where we were in 2007. In 2011 the profit from operations is negative $687,000, which is similar to what it was in 2007. And

then there was an improvement in 2012 that reduced the loss to negative $299,000, which is again sort of similar to what happened in 2008. So if you're asking for a discernable trend there, no. I don't see that. It's bouncing around. It's sort of -- the only improvement that I see there is -- is well, it looks like the same improvement. I mean, you know, if you look at the difference between 2007 and 2008 and say that's improvement. Then in 2009 it's negative 2 million. You look at the improvement -- well, then in 2010 it's negative $120,000.

Q. So looking at 2009 to 2012 each of those years it goes from really bad to bad to less bad each year after that?

MR. RAMSEY: Form.

A. Let's look at 2007 to 2012. Why are you limiting?

Q. Do you know what happened in 2009?

A. Yes. There was a recession.

Q. No. Do you know what happened to Eber-Connecticut in 2009 that explains that?

A. I don't recall.

Q. Are you familiar with the brand Yellow Tail wine?

A. Yes.

Q. And you heard about how Eber got dualed?
A. Dualed.
Q. They also tell you that Yellow Tail in any event was a very low margin wine for them?
MR. RAMSEY: Form.
Q. They sold a lot of volume, but never made much profit off it.
A. Okay.
Q. And in 2010 that's when the company retained Glenn Steurm and began to reorganize and restructure their business plan. Did you know that?
A. Yes.
Q. And did you ask when that Wendy and Lester -- whether they actually were implementing changes that explained the positive trend from 2009 to 2012?
MR. RAMSEY: Form.
A. To explain the trend? No.
Q. Does it matter why the financials were improving from 2009 to 2012 in your analysis?
A. Well, I mean I am looking at the whole series and I don't see any drastic improvement. You want to focus on 2009. Okay. That explains a big loss in that year. I just don't -- looking at the numbers it doesn't look like -- you can say the same thing. Put a blinder on and look at 2007 and 2008. And by your conclusion you

would say, "Oh, my gosh. Look at the improvement. It lost $656,000 in 2007, but it only lost $140,000. What a drastic improvement. This is great. What a growth rate it's going to be. Let's look at 2009. There is explanations, but look at the loss for 2009. Look at 2010. There is a big loss for 2010. So taking a snapshot of 2007 and 2008 didn't give a very good indication about what was going to happen in 2009 and 2010, did it?

Q. And by the same token it does -- looking at 2007 and 2008, including that with all this and refusing to look at the trend within the most recent four years, doesn't give you a very good snapshot of what the future is going to hold, does it?

A. Well, I think the more data you have, the better you can understand what the trend is. Looks to me as it's bouncing around. I get it. They hire Steurm. I don't see any drastic improvement here. It's bouncing around. Big negatives. Slightly less negatives. Big negatives. Slightly less negatives.

Q. It didn't happen that many times.

A. It did. Big negative 2007. Slightly less negative 2008. Big negative 2009. Slight less negative in 2010. Big negative in 2011. Slightly less negative in 2012.

Q. You just did it wrong there. It went slightly less negative in 2010. Slightly less negative in 2011. Slightly less negative in 2012. That's the trend as far as earning goes. It doesn't jump back up, does it?

MR. RAMSEY: Form. Are you testifying, Brian, or are you asking him the question?

A. I am looking at the bouncing around. It's bouncing.

Q. Do you see that revenue?

A. I see it. Do you see it? You're trying to assess a trend here. I don't see a trend.

Q. Do you see revenue is essentially flat from 2010, 2011 and 2012 right around 36.5 million dollars?

A. Here is what I see. I see that the beginning of this series looks like the end of the series. That's what I see.

Q. So you would predict based on this that in 2013 there would be another huge loss like after 2008? Is that what you're saying?

MR. RAMSEY: Form.

A. No. I said what I said. I am looking at what the profitability looks like in 2007 and 2008. That looks awfully similar to what happened in 2011 and 2012. So where is the trend?

Q. Do you think that the Yellow Tail was going to

dual them again?

A. Yellow Tail went out in 2009. That's what you just told me.

Q. So past event couldn't reoccur, right?

MR. RAMSEY: Form.

A. Whether it could occur with another wine, I don't know.

Q. Do you know whether Yellow Tail --

A. I am looking at these numbers and I don't see the trend that you see.

Q. Okay. That's fine. And as part of your analysis you did not attempt to determine whether Lester and Wendy Eber were making changes in the business to improve profitability; is that right?

MR. RAMSEY: Form.

A. My analysis reflects and all these analysis reflects that there will be improvement in profits because it's positive equity value for Eber-Connecticut. So in all those scenarios, there is improvement in profit.

Q. As part of your analysis you've reviewed the May 23, 2012 order of the court in which it declared that Alexbay's acceptance of Eber-Metro's stock in satisfaction of the debt was commercially reasonable, correct?

A. Yes.

Q. Did you rely on that in any way?

A. No.

Q. Did you make any attempt to asses whether that the information to provided to that court was accurate?

A. No. I mean only to the extent that I am doing a valuation with regard to Pole-Bridge Bowman, which the court relied on.

Q. And do you know if the court actually relied on anything?

A. I thought so. I may be mistaken, but thought the transaction was the key factor that the court used.

Q. It was disclosed to the court. But did you see anything indicating that the court actually looked at the papers given that it was uncontested?

MR. RAMSEY: Form.

A. Maybe if you show me the document, I can refresh my recollection. Sitting here today, I don't remember.

Q. Do you remember that action was not contested?

A. I don't remember.

Q. In terms of what was submitted to that court, did you consider the description that Lester Eber gave to the court of what Eber-Metro was worth in your analysis?

MR. RAMSEY: Form.

A. My valuation analysis is indicated in this report. I don't remember what Lester said when reflecting my valuation. So I would have to look at what he said. Maybe what he said is in there. I just don't know.

Q. Okay. This is previously marked Exhibit 45. It's an affidavit from Lester Eber dated March 14, 2012. I am going to direct your attention specifically to Paragraph 6. Okay.

A. If you don't mind, I am going to read the context of this.

Q. Sure. Okay.

A. Okay.

Q. Have you seen this before today?

A. I don't remember seeing this.

Q. And is there any new information in there for you?

A. I don't know if this is new. It is valuing Eber-Connecticut at 4.6 million.

Q. And that's based on the Pole-Bridge Bowman transaction you understand, correct?

A. It doesn't say that.

Q. I guess it says very recent arm's-length sales on the open market. Do you think that's referring to Pole-Bridge Bowman?

MR. RAMSEY: Form.
A. I don't know.
Q. Is it your understanding that the Pole-Bridge Bowman transaction was conducted on the open market?
A. I think by open market it means at fair market value. I don't know. I am not sure what open market means in this context. But does it say that Pole-Bridge Bowman is n here somewhere?
Q. I am not sure it's in this document. I will represent to you another document filed by the lawyers reference only the Pole-Bridge Bowman transaction and did not reference any other transactions involving the company.
A. Okay.
Q. So I want to draw your attention in particular to the last line there. It says, "Because it, Eber-Connecticut, is Metro's only significant asset that 79 percent interest valued 3.66 million itself establishes the value of Metro." So he didn't mention anything about any liabilities there, correct?
A. No.
Q. Do you know why that is?
MR. RAMSEY: Form.
A. No.
Q. Do you consider this statement by the purchaser

of Eber-Metro about his understanding of its value to be relevant to your analysis?

A. Well, it seems to be contradicted on its face anyways. It seems to contradict what I have been provided as a legal assumption. I don't know. I mean, you know, whether -- so this seems to be consistent with your legal definition as opposed to the legal definition that I was provided with. But it also seems to contradict what I said earlier, that an investor would certainly reflect those liabilities and any assessment of Eber-Metro. Best I can do with that.

Q. And I think you may have answered this before, but I wanted to make sure I understand. In your opinion, the purpose that Lester Eber and Eber Wine and Liquor had for entering into this transaction doesn't affect your valuation analysis; is that right?

A. The purpose?

Q. Such if the purpose was to shield assets from creditors, would that affect your analysis?

A. I mean it doesn't affect my solvency opinion. It doesn't affect my valuation the Eber-Connecticut. Those stand independent. Whether the trier of fact somehow because of what you say is true that they think this transaction should be undone accordingly -- that's really a finding that the court may or may not. But it

doesn't -- no. It doesn't really affect my opinion.

Q. Okay.

A. Unless I am missing something.

Q. If the transaction is engaged in for the purposes of shielding assets, doesn't that affect the probability that contingent liabilities would be assessed against it?

MR. RAMSEY: Form.

A. I think if that was the -- for example, if an investor -- let's hypothetically say Lester did that, it may affect his view -- specific investment view. But it doesn't affect, you know, what I think that a reasonable investor would assess in this particular instance.

Q. So in your opinion, you think a reasonable investor would look at this transaction and think that it would not be a successful way of shielding Eber-Metro and its interest in Eber-Connecticut from the creditors of Eber Brothers Wine and Liquor Corp; is that right?

A. I think that's fair.

Q. Now, you have done a lot of corporate transactions and valuating them. Have you ever seen a transaction with the same general setup as this, where an officer or director of a company transfers it to himself on the grounds that he is a creditor foreclosing on a loan that he had given to the company?

A. It's pretty specific facts.

Q. We can open it to officer or director.

A. Okay. I mean the best I can think of -- I have been involved in cases where the company has been taken private by officers or directors. And as I said, there has been cases in which in a transaction the common shareholders got nothing because of priority claims. But nothing is coming to my mind about a single case that contains all those facts.

Q. Right. I think is it fair to say the distinguishing feature is how this company was acquired through a creditor foreclosure attempt as opposed to a more transparent sale or purchase?

MR. RAMSEY: Form.

A. So you're asking me if I have been involved in a case --

Q. Let me step back. In those cases where management acquired the company, took it private and whatnot, is it fair to say there were a number of procedural protections that were involved to ensure that shareholders were not getting shafted?

MR. RAMSEY: Form.

MR. CALIHAN: Form.

Q. Ensure that shareholders were not being taken advantage of?

MR. RAMSEY: Form.
MR. CALIHAN: Form.
A. So the cases that I am thinking about are cases in which the shareholders believed they were being taken advantage of and the process to determine that was in litigation, if that answers you.
Q. Were there any steps taken by management at the time of the transaction? Did they get a fairness opinion?
A. Yes. There were steps, but the steps were contested.
Q. Was the transaction disclosed to the shareholders before it was commenced or closed?
A. Yes.
Q. And do you know whether this transaction in this case was disclosed to the trust beneficiaries before it was concluded?
A. Well, let's see. My recollection is that the other trust members or beneficiaries were provided with the opportunity to participate in raising new capital. That I do remember. I have seen a letter. And I just don't remember whether that particular letter also contained the -- or any other letter contained the, you know, my words -- the foreclosure, the extinguishing of the common equity.

Q. So I think I know what you're referring to. I think you're referring to giving other trust beneficiaries, you know, the opportunity to loan money to the company under the line of credit that Lester established?

A. Kind of like a rights offering. You want to maintain your position, you've got to pony up the money or else you're going to get left out. It's kind of like that. Not exactly.

Q. An equity offering is different than a loan offering, right? Typically creditors don't get to just convert their debt to equity unless it's clearly labeled as a convertible note of some kind?

MR. RAMSEY: Form.

A. Or unless the equity is worth zero.

Q. Then you're saying in that case the creditor would convert the debt to equity that's worth zero?

A. The creditor de facto becomes the residual claimant, I.E. the equity holder. If there is no equity above it, it becomes the front line and it bears all the risk and reward for the prospects of the that company at that point in time, which is what happened here.

Q. Do you know what the typical remedy is for a creditor who is trying to foreclose on a debt that has not been paid by a company?

MR. RAMSEY: Form.
Q. What usually happens?
A. Sorry?
Q. So a creditor loans money to a company. Company doesn't pay it. Creditor tries to foreclose on the debt. Does he acquire ownership of the company?
MR. RAMSEY: Form.
A. You're kind of in an area, I am not sure what the legal steps are. My recollection here is that there is -- if you default on your debt payments, the next step is bankruptcy. And then following bankruptcy there could be some kind of reorganization or it could be that the debt holders become the residual claimants.
Q. Did you inquire as to why there was no bankruptcy in the case of Eber-Metro, Eber Wine and Liquor or Eber-Connecticut?
MR. RAMSEY: Form.
A. No. That goes beyond what I was considering. You know, if you're suggesting to me that was illegal to do that, that's not under my purview.
Q. In your report you also offer an opinion on the reasonableness of the interest rates on Lester's loans, correct?
A. Yes.
Q. Now, is it fair to say you didn't conduct any

sort of work like forensic accounting and whatnot to determine whether those loans were correctly stated or validly entered into in the first place?

A. No.

Q. So you simply assumed them to be valid on their face at the stated rates of interest?

A. Yes.

Q. And you used the 9 percent interest rate on the 2006 loan even though it was just handwritten in by Lester?

A. I did.

Q. Have you seen that before, where the person who is getting the interest unilaterally increases the interest rate by a handwritten notation?

MR. RAMSEY: Form.

MR. CALIHAN: Objection to form.

A. I don't remember one way or other.

Q. And one of the things you said it was -- those rates were consistent with the debt by distress companies that you had tracked?

A. Yes.

Q. Would it affect your opinion about whether the interest rates that Lester, himself, was receiving were reasonable if Lester, himself, was responsible for the company being distressed?

MR. RAMSEY: Form.
A. So you're saying that there was some impropriety and I don't know purposely driving down the value or something?
Q. If something like that happened, would that affect the reasonableness of the interest rates?
MR. CALIHAN: Form.
A. Well, it goes well beyond the reasonableness of the interest rate. No. I don't think -- the interest rate is predicated on the financial distress of the firm. If you're saying the firm itself is in financial distress because Lester wanted it to be in financial distress that goes to the valuation in its entity.
Q. And so you're saying that if there was evidence and a fact finder concluded that Lester wanted the company to be in financial distress so he could foreclose on his loan and take ownership of it, that would make your valuation analysis less reliable?
MR. RAMSEY: Form.
A. Let me be specific. If there -- I mean analysis implies that this company is being run to maximize shareholder value. There is no fraud being imposed upon shareholders. And that there is no purpose in fully driving down the value. If the finder of fact concludes that's the case, then yes. You know, the

financial numbers that I am using would be fraudulent. It's kind of like your example of statements. I don't know what I would do with that.

Q. Would diverting corporate opportunities outside the company constitute conduct on your view -- would be the sort of misconduct to drive down the value of the company along the lines that you mentioned?

MR. RAMSEY: Form.

A. Well, you've can kind of gone to, you know, if a trier fact concluded there were improprieties. Now that I am drawing conclusions about improprieties. That's not in my purview.

Q. You mentioned fraud. Is it fair to say that diverting corporate opportunities is another kind of misconduct that could be something that would affect valuation?

MR. RAMSEY: Form.

A. That's not my purview. If the judge determines it, so be it. I am not going to weigh in what constitutes whether it's poor management, mismanagement, fraudulent management. Those are not issues that I am going to weigh in on or I consider my expertise.

Q. Have you ever been retained to value a corporate opportunity under the doctrine of usurp -- of corporate opportunities or diversion of corporate

opportunities?

A. I don't even know what that is. Doctrine of what?

Q. You're not familiar with the corporate opportunity doctrine?

A. No.

Q. So is it correct to say that you have not, in connection with this case, looked at all into whether Lester Eber diverted corporate opportunity when he received $600,000 a year from Southern while he was still being employed as the president and CEO of Eber Brothers?

MR. RAMSEY: Form. Go ahead.

A. I have not.

Q. And you have not conducted an analysis to see whether if Eber Brothers was receiving $600,000 a year from Southern from 2007 through 2012 or how that would have affected the valuation as of mid-2012; is that right?

MR. RAMSEY: Form.

A. As a side payment thing? Is that what you're saying?

Q. I will set the facts from you. Lester Eber has part of the transaction in which -- and we're just -- I am not necessarily saying these are the facts. We can call this a hypothetical. Lester Eber when he is

negotiating the sale of assets New York, Ohio and Delaware of Eber Brothers. And money for that is transferred to Eber Brothers from Southern. He also negotiates a side deal for himself in which he gets $600,00 a year for five years for Southern for consulting while remaining president of Eber Brothers and also becoming president of Eber-Connecticut and receiving a salary in accordance with that work at the same time. So with that fact pattern and what my question is, did you conduct any sort of analysis to see whether if $600,00 more income had been paid to Eber Brothers rather than to Lester Eber for that five-year period, the valuation of the company as of 2012 would have been significantly positive?

MR. RAMSEY: Form.

A. No.

Q. On Page 16 of your report footnote 25, you've got a citation notion case where it says, "While it is true that an arm's-length transaction thus so called willing buyer, willing selling test is the best evidence of and often the easiest method to determine fair market value is by no means the only such evidence." Do you see that?

A. Yes.

Q. Do you agree with that statement, that an

arm's-length transaction is the best evidence of fair market value?

A. Well, it's certainly a key piece of evidence if the arm's-length transaction is for the same thing. As I said before, when the transaction itself has substantial rights being granted to either the purchaser or the seller, then you can't use that transaction on its face. You have to make adjustments. And those adjustments of course become, you know, a difficult thing to measure in and of themselves. What is the value of those particular rights? And that tends to be a function of the facts and circumstances of function of the value of the company itself -- the capital structure. So it's just difficult. And that's kind of the situation that were at here.

Q. So it sort of leads me to my next point. So on the Eder-Goodman transaction is the most obvious arm's-length transaction -- closest in time, anyway. Why didn't you make any -- I understand you made adjustments for the additional rights that Eder-Goodman for some of them. You didn't make any adjustments in the other direction for the restrictions on their stock that was atypical, did you?

A. Restrictions on their stock? I thought the two issues that I thought were highly material and highly valuable had to do with the ROFR and, you know, the

preferred characteristics. There are other rights that they got that I did not value that presumably had value. And, you know, not as much as those two. To the extent there were restrictions, I don't remember the exact restrictions. But the thing I was most concerned about were the two key -- the two key rights that without question have value. I mean I think even in your complaint suggested that is significant value to the rights of first refusal. I don't think there is any disagreement.

Q. We certainly appreciated that part of your opinion. So, no. I am not talking about that. You earlier testified that a restriction of marketability is something you need to discount for; is that still your view?

A. If you're trying to sell to an individual -- a number of small individuals -- then marketability becomes an issue. If the marketability discount generally when you ask a practitioner -- a valuation practitioner and you're saying I am selling a large block of shares, then the marketability discount becomes pretty much de minimis and nobody factors that in. So it's really relevant if you're selling one share or two shares and trying to understand, you know, what would you get if you sell, you know, a very, very small fraction of the total shares.

Q. Are you aware of whether there were marketability restrictions on Eder-Goodman's 15 percent interest?
A. I don't remember.
Q. Direct you to -- this is what's been previously marked as Exhibit 57, Section 7.1. Restriction on disposition. And actually I'll let you take a look at that. I need to take a five-minute break here.
(Whereupon, there is a short recess in the proceedings.)
Q. Let's go back to this.
A. Uh-huh.
Q. All right. I want to ask you a little bit more about your decision to not consider the acquisition of Slocum in 2005 as a valuation.
MR. RAMSEY: Are we not doing this?
Q. I am sorry. I didn't have it in my hands. Let's stick with that. You had a chance to review Section 7.1?
A. Yes.
Q. And do you see there that it limits the potential transferees of Eder-Goodman's interest to the parent companies of Eder-Goodman?
A. Yes. No provision of the agreement governs the proposed disposition? What were the provisions of this

agreement?

Q. Well, I think it's a legal question. So for purposes of today, let's assume this is a restriction on transfer for Eder-Goodman. I don't want to have you go through the whole document. I will represent to you to assume that Eder-Goodman cannot transfer its 15 percent interest without complying with this section.

A. Okay.

Q. Because there is tag-along rights. I think those are the other provisions. Based on that, this is a restriction to the marketability of those shares; fair to say?

A. Under your hypothetical.

Q. Okay. And under this hypothetical, would that affect your valuation of the transaction?

A. Well, it could. I mean I think what you're basically suggesting to me that your interpretation of what you're saying is that look you've got to, you know, if you're going to do the most important right, you've got to do all the rights and all the restrictions and do valuation of all these things if they are not present for the purchaser of the shares. So I would have to do some real hard thinking here to see what -- what are the restrictions that would govern the sale of Eber-Connecticut -- not the 15 percent interest, but all

the other shares -- the ownership interest given this agreement. And I haven't. You know, there are other marketability discounts no matter who buys these shares, even if it's a block interest. So I haven't really thought about the marketability. I haven't taken any marketability discount on any of these valuations. So I would have to consider that and weigh all of the restrictions that would normally apply to anybody who is buying these shares, you know, outside of the Eder.

Q. So as compared to right of first refusal where a party can transfer it, but someone else who has the right of refusal can come in and take it away from them to -- that impairs transfer because it makes potential buyers less willing to go in for it; is that correct?

A. Yes. I think that's fair. In this case in particular it makes it extraordinarily difficult for any distribution company that wants to retain synergies by acquiring Eder to do so because of the Eder right of first refusal.

Q. Although since Eder is also in the wine and liquor business it would have the same synergies?

MR. RAMSEY: Form.

A. Didn't they pay for it through this right of first refusal? That's the point. Now you finally get it. That's exactly what they paid for. They got

effectively paid a control premium because now they are retaining the synergies. I think you finally understand the point.

Q. But they also can't ever get out of this investment by transferring it to someone else themselves?

A. Again, I would have to take a hard look at this.

Q. Let's assume that's true. They are restricted on the ability to depose of the stock. So as long as the company is going concern, they have to keep their money in there. Doesn't that affect the value of it?

MR. RAMSEY: Form. Go ahead.

A. If there is no similar restrictions when the other 85 percent interest is sold, you know, what a willing buyer would be interested in paying for this is going to be dictated by the other terms and conditions. I am not sure whether the marketability discount would apply to a buyer, too.

Q. I believe that it does say in there that in order to comply with this potential thing -- if they were to transfer it to their parent companies, then they have to agree to the same terms as all other parties in this agreement or if there is any transfer that may be allowed by this for any member has to -- they have to be bound by any agreement. And I think it was mainly for Eber-Metro.

But is it -- this is a restriction on transfer that says the others party can simply veto it. That's not a right of first refusal, right?

A. Say that again?

Q. So assuming that this permits Eber-Metro to simply say no to any potential transfer, that's a right of first refusal, correct?

A. No.

Q. That's just a right of refusal?

A. Yes.

Q. Have you seen that before?

A. Yes. In fact, it doesn't -- yes. I have seen that before. When there is restrictions on who you can sell to, when you can sell. Restricted stock is kind of like that.

Q. So for the right of first refusal you came up with a percentage of 15 percent as far as what the potential value is. What percentage would you assign to the right of refusal, assuming that's what this is?

MR. RAMSEY: Form.

A. You can't get control for buying 15 percent of this company. And that's what they owned is 15 percent of the company. So, again, we're sort of missing each other on the level what the ROFR is accomplishing.

Q. Well, they can't transfer the ROFR either.

That's the point, I guess. Remember that's part of it.

A. Why would they have to? The point is -- and I think we just touched on this point -- is that this was effectively paying a control premium. That is what's impounded in that price that they paid. I mean, that's the economics behind it. So the essence of the value of the ROFR has to do with the direct effect on obtaining a control premium and some later transaction. There is no premium associated with the 15 percent. So the same logic can't apply. Whether there is a marketability restriction, possibly -- possibly. I would have to go through the entire document to understand exactly what would occur and what other members are facing with regard to the marketability discount vis-a-vis this document or other documents for the members. But, you know, yeah. It's possible that the ultimate conclusion is that there may be with some marketability discount whether that applies to all shares, now we're in the realm of well minority discounts and marketability discounts. And by the way, that also opens the door, I think, to understanding these other rights. You know, for example, on Page 28, Line E, no major decisions shall be effective binding on the company unless approved by unanimous consent of all members. They are one of the members. That's a pretty substantial right, too. That says, "Hey,

we can veto whatever we want to veto."

Q. It's limited to ten items.

A. They are pretty important items, aren't they?

Q. But none of the business decisions about the direction of the company?

MR. RAMSEY: Form.

A. Or do they? You know, selling the company. I mean, you know, look, my attempt here was to try to understand the two key valuable rights in particular eliminating -- in my opinion, eliminating the control premium is substantial. For a company in distress, the priority rights on the preferred stock is very substantial.

Q. All right. Now, did you see anything in the LLC agreement that gives Eder-Goodman any right to control the day-to-day operation of the business?

A. I have to go back and look.

Q. Do you recall seeing that?

A. You know, I have a recollection, but I would have go back and read the document.

Q. Does a control premium usually convey along with it when someone pays that the ability to manage the company?

A. Yes.

Q. And in this case, it does not, correct? They

get one seat out of the seven on the board.

MR. RAMSEY: Form.

Q. Does that sound like control of the management?

A. Well, when you eliminate the potential for a company to -- the potential to get a bidder to come in and buy your company and get a control premium, you've effectively limited the control premium.

Q. Now, what if in this case the Eber family that owns Eber-Metro and Eber-Connecticut has no desire to ever sell the business. Does that not reduce the adverse effect of the right of first refusal and also the guaranteed purchase price?

A. So your question is if the Eber --

Q. If Eber-Metro has no intention to ever consider selling the business.

MR. RAMSEY: Form. Go ahead.

A. Let me see if I can explain this in terms you can understand. If someone bought an asset that you owned as valuable, but you don't put a lot of value into it. But you know that they think it's valuable. Would you give it away for free? Would you say, "I don't put much value into it. And even though you do, I going number charge you for it. Here it is. Take it away." That doesn't make sense to me. There is an opportunity there. And so why would an economic player when money is

at stake just give away something that the buyer thinks is valuable? That, for reasons I am talking about here, is why it's valuable. Understanding full well even though today I may not have interest in selling, it pretty much locks me in. And I am giving that up for nothing. That doesn't make sense to me. That's kind of what you're proposing. If I don't value it, I am going to give it away. I wouldn't. I don't think you would either.

Q. And by the same token, is it correct that if Eber-Metro understood it had created a loophole in the right of first refusal by allowing it to sell Eber-Metro itself without triggering any of that, that would not effect the valuation either?

MR. RAMSEY: Form.

A. Well, if it created a loophole and it knew it created a loophole, it's not going to undercut its price from Eder, right?

Q. As long as Eder doesn't see it, right?

A. You're saying they didn't see it. Well, you're making two suppositions. One, there is a loophole and the other is they didn't see it.

Q. Okay. Assuming that was the case and perhaps it was even something that was concealed from them and intention to transfer Eber-Metro and the transaction was

deemed to be fraudulent, is the fact that a transaction was fraudulent in terms of the intent of the seller, does that affect its ability to be used as a precedent transaction?

MR. RAMSEY: Form.

Q. If the buyer bought it in good faith?

A. Wow. You lost me on this one. I'm sorry. I don't understand the question.

MR. CALIHAN: Objection to form.

Q. So I just want to make sure I understand what may come out of your mouth at trial.

A. Fair enough.

Q. If a transaction was entered into with fraudulent intent by the seller, but the buyer was a bonafide purchaser, would the fact that the transaction had fraudulent intent on the seller's part affect the use of the transaction as precedent for valuation purchases?

MR. RAMSEY: Form. Go ahead.

A. I don't know.

Q. Me either. I am genuinely asking. In terms of the guaranteed purchase price, for that you put in a 25 percent premium, correct, for Eder-Goodman?

A. The priority claims?

Q. Yes.

A. Yes. I mean at minimum 25 percent. The

company distress, you know, it could be substantially more than that.

Q. Why wasn't that Eder-Goodman's interest ever on any balance sheets listed at preferred interest?

A. I don't know.

Q. Did that affect opinion at all?

A. I mean, I looked at that contract. That seemed pretty clear to me. They get priority. I don't know how else to interpret it. Why that doesn't appear -- it's technically not preferred stock. I don't know what the accounting rules are. I can't tell you why it's not listed as much.

Q. Now, in your experience does preferred stock typically have some sort of way of accreting value beyond what the common stock does prior to it being redeemed?

A. You mean like a dividend?

Q. Like a dividend or interest rate, essentially that.

A. Well, preferred stock wouldn't have an interest rate.

Q. Not exactly interest. But there is a percentage that it will increase overtime, say?

A. Sometimes.

Q. And there was nothing like that associated with the Eder-Goodman?

A. This was not preferred stock. It was common stock that had priority. You know, I call it preferred stock, but I say it is the similar characteristics and similar economic analysis of the convertibility preferred stock, but it wasn't. It was common stock that had this right attached to it.

Q. When there is preferred stock and common stock and there is distribution to shareholders in a typical corporation, does that money typically bypass the preferred stockholders, or do the preferred stockholders have some greater interest --

A. It depends. I have seen arrangements where common stockholders cannot get any distributions unless the preferred stockholders are paid. I have seen other instances where that's not the case. I don't know there is any steadfast rule governing.

Q. Preferred stock is essentially a creature of contract; is that fair to say?

A. A company is a nexus of contracts. Contracts with suppliers. Contracts with employees. Contracts with stockholder, bondholders. You know, the economic term is that a firm is a nexus of contracts.

Q. But the relationship between a company and its common shareholders is not something that is defined by any sort of contract between the common shareholder and

the company. It's defined by laws, correct?

A. Well, I mean, I can only tell you that when economists write about the theory of a firm they call the firm a nexus of contracts. It's not a person. It's not an entity. It's a nexus of contracts. If you dispute that, then you can talk to Professor Jensen because that was his insight.

Q. With respect to preferred stock; is it correct that preferred stock can have almost any terms that it wants to have in there?

A. I don't know. I have seen preferred stock with different terms. I don't know what the rules are with regard to preferred stock.

Q. Do you know whether corporations owe fiduciary duties to stockholders?

MR. RAMSEY: Form. Go ahead.

A. They certainly owe a duty to the preferred stockholders if the company gets into financial distress because they are next in line. I don't know whether that only kicks in when the value of the equity starts to diminish close to zero. I just don't remember.

Q. In terms of the Eder-Goodman interest in Eber-Connecticut, what rights did it have with respect to ordinary distributions during the course of business that did not occur upon a change of control or a sale of the

assets?

A. I don't remember.

Q. Okay. I will represent to you that it received a pro rata that was 15 percent of any distribution.

A. Okay.

Q. Is that consistent with your recollection?

A. I just don't remember.

Q. Does the fact that Eder-Goodman had no right to a greater amount of regular distributions that didn't occur upon a sale of the company or substantially all of its assets affect your valuation?

A. No. My analysis has to do with a company like this in financial distress and in who is on the front line, who gets paid first if any money comes in. So if you have a company that is in financial distress and it's either liquidation or there is some kind of acquisition, if the valuation is low with regard to its liabilities and these guys get first dibs on anything that is coming in on 4.5 million dollars, that is pretty substantial.

Q. So the answer to that was no? Just making sure in terms of the ordinary dividends were not a factor.

A. That did not factor into my analysis.

Q. Where did you get the 30 percent number for the historical control premium that you used?

A. You know, that is a number that has been kind

of used as a general finding from the academic literature on merges and acquisitions. I think if you looked to some of the papers written by Professor Gerald, Bradley Desai Kim, recently papers by Professor Berneil (phonetic). Those pretty much kind of provide some rough approximation of what the premiums have been.

Q. Did you actually reference that for your report?

A. I don't remember if I have or not.

Q. Consistent with the general rule of providing things, I request the citation for this number, wherever it came from, be provided. So in terms of going back to the 2005 acquisition of Slocum, you said you did not consider that because, I guess, two reasons. One is the 2003 financial results indicated positive net income. And because you did not have 2004 financial results; is that right?

A. Yes.

Q. Would you expect to see 2004 final results as something that was taken into consideration in this transaction given that it was closed in April of 2005?

A. Yes.

MR. RAMSEY: Form.

Q. Do you know whether those were even available before the transaction was priced?

MR. RAMSEY: Form.
A. I don't know.
Q. Did you ask anyone?
A. Yes.
Q. What did they say?
A. They couldn't find any financials for 2004.
Q. And no one indicated to you that they will related to 2004 financials when pricing the transaction; is that right?
A. No.
Q. Did anyone indicate that they relied on Slocum's earnings at all in pricing the transaction?
A. No. I don't remember having that conversation.
Q. What would your opinion change in terms of whether -- would any of your opinions change in your report if you learned that Slocum's earnings prior to being acquired did not significantly affect the purchase price that Lester Eber was willing to pay for it?
MR. RAMSEY: Form. Go ahead.
A. No.
Q. Why not?
A. Well, I am trying to establish a relationship between -- however you arrive at your valuation, I am trying to establish a relationship between the value and profitability to apply that ratio at a later point in

time in 2012. So, you know, if he didn't consider it and the ratio was high because he thought it was valuable, that would be applied in 2012. But I mean I just got to have the numbers. You could say that for any transaction. What did you look at? Did you look at this? Well, you can't use the ratio. That don't make sense.

Q. I am asking specifically here if you learned that Lester Eber said that whether the company made money or not did not affect his decision about how much to pay for the company, would that affect your opinions?

MR. RAMSEY: Form.

A. No. I don't think so. I would have to think about that. I mean -- I just don't know what to do with that. You're saying there is no economic basis completely detached.

MR. RAMSEY: Don't start speculating.

Q. If the purchase was made for purely strategic reasons without an expectation of necessarily generating profits from the Eber-Connecticut entity itself, would that affect which valuation you relied on?

A. I suppose that is another reason not to use it. If it's completely divorced from the expected cash flows. That there is some kind of strategic reason. I don't know how that would apply in 2012.

Q. You're familiar with the concept of goodwill in an acquisition, correct?

A. I am.

Q. And do you know what the amount of goodwill that was associated with the Eber-Connecticut by Eber-Metro on its balance sheet?

A. I do not.

Q. Does 14 million dollars sound about right?

A. I don't remember.

Q. Does the amount of goodwill that is allocated by a company after an acquisition affect your valuation analysis?

A. The goodwill is the difference between the purchase price and the value of the assets. I forget which kind of transaction where the value of the assets grossed up. But in large measure it's going to be the difference between the book value of the assets and the purchase price. So whether the book value of their assets at that time represent the market value is the question. So consequently you can have substantial amount of goodwill on the books, but that can also translate to the fact that assets as they're on the balance sheet do not reflect market value.

Q. In order to determine -- let's step back. If you actually valued the assets of Slocum rather, you

know, saying you used the Prospect Beverages multiple apply it to Slocum beforehand. And then you get the assets value and you find out the amount paid was 10 million dollars over that. What do you do with that 10 million dollars in terms of your other valuations or trying to value the company at a later date? Does it affect it at all?

MR. RAMSEY: Form.

A. I mean the steps you just went into are not what I do. Why would I apply -- I am confused. It sounds like you're saying you first have to value Slocum in order to value Eber-Connecticut and value Slocum using another multiple, but not the purchase price of Slocum.

Q. I am asking you, I guess, if you could test the reliability of your preferred multiple by applying it to that actual transaction. The company was acquired. And saying, "Okay. Based upon the financials at the time this company should have been worth X amount the dollars, but they paid Y amount of dollars more than that." And, therefore, use that as a way to test whether your preferred metric is actually something that is a reliable indicator of the market value of the company given there is a disparity between of the actual market value for the transaction and your calculation?

MR. RAMSEY: Form.

A. Let me see. I am having a hard time. Let me see if I can -- see if this responds to your question. And I think you began with the hypothetical that the price paid for Slocum far exceeds what any one stand-alone valuation of Slocum would be. Now, you called strategic, but frankly nobody would pay a price above a stand-alone value unless someone believed that it's going to generate synergies from this acquisition. So that is a proxy. The incremental piece is a proxy for what I say is given up by the ROFR. That huge premium that you're talking about is exactly my point. That's what's given up. That's the kind of -- if that is -- if what you're proposing is correct, then that's exactly what I am talking about. Somebody is paying for the company a lot more than its stand-alone value because they think that they are going to be able to extract a lot a value from it.

Q. Sure.

A. And that's exactly what you're giving up from this ROFR.

Q. It goes back to the ROFR, I guess. But in that instance does it at least call into the question the other comparable based methodologies that you're using. If the comp transactions that you want to use cannot come close to accounting for the actual amount of money that

was paid either in the Slocum purchase by Eber-Connecticut or in the Eder-Goodman acquisition, which had its ROFR, doesn't that cause you -- wouldn't that cause you to question the reliability of the metric based on Prospect Beverages?

MR. RAMSEY: Form.

A. No. Quite the contrary. I think, you know, under the hypothetical that you gave me if it's correct, it indicates that my adjustment based on the ROFR is way too small.

Q. Okay. So the ROFR adjustment could be larger, correct, is what you're saying in that instance?

A. Yes. I mean predicated on your conclusion that is exactly what it would tell me. That I was too conservative in assessing the value. And I ought to increase it substantially if what you tell me about Slocum is true. You know, if the strategic alliance between two companies causes Lester to pay a huge amount in excess of the stand-alone value to Slocum, that's presumably what would accrue to another company, but that's precluded. And I say effectively precluded by the ROFR. So that's what you're giving up. And that's what I was trying to say before. You know, whether if Lester valued it or not, if he knows they valued it and put in their contract as to how many they valued that. So did

Southern. While doggone it. I am going to charge you for that. I paid for it back here. I am going to charge you for that same.

Q. Right.

A. Now in this transaction price. Yeah. I mean that's a very interesting point. And I think it does provide me with a lot of comfort with regard to this ROFR.

Q. Unless of course the ROFR is not applicable of the sale of Eber-Metro which is ultimately the entity that you were valuing, right?

MR. RAMSEY: Form.

A. Your legal construct there.

Q. Right. So is that an agreement that that would change things?

MR. RAMSEY: Form.

A. Again, I would have to go through and understand that, you know, given what you said -- I've got to understand the documents and make my own determination of it. If you're representing to me that Metro could do whatever it wanted. It could sell -- effectively sell Eber-Connecticut and they couldn't do anything about it. Then they overpaid.

Q. But that wouldn't change it from being a reliable basis for determining the actual value of

Eber-Metro with its true control just because they were tricked into paying a high amount, doesn't mean that it's not a fair value for the true control premium, correct?

MR. RAMSEY: Form.

A. So --

Q. Let me rephrase. Eder-Goodman paid the high-end price because they thought it was getting a ROFR that was partial control interest essentially or half of a control premium in your view, correct?

A. Yes.

Q. If it turns out they were wrong about that, then ultimate control rested with Eber-Metro. So if you're valuing Eber-Metro, then there shouldn't be a discount based upon the earlier price by Eder-Goodman. And, in fact, it would be effective of Eber-Metro would be worth.

A. So the court determines that Eber-Metro could effectively sell control of Eber-Connecticut. I agree. Then you can have a control premium. I find it hard to believe, but who knows.

Q. So the training comparable is the part of your analysis. You used four companies that had been identified by Wendy Eber in a presentation to the PBGC?

MR. RAMSEY: Form.

A. Yes.

Q. Why did you look at those companies?

A. As I said before, one of the things that I always take into account is front-line managers. What do they think about their company. They typically have the best view as to what they think are reasonable proxies for their company. And, you know, Wendy is a CPA. She has an MBA from the Simon School. She's been running this company since I think 2008. I can't remember. So she has been involved in this company. She is an intelligent person and she looked at these. I thought well, okay. And if she looked at these and she thinks they are reasonable proxies, then let me do the same thing. Let me take a look at that. Although I looked at them, I felt that three out the four really didn't fit the characteristics that I was looking for.

Q. You're saying that you didn't see Eber-Connecticut as similar to Cisco Corporation?

A. Or Pepsi Cola. As I said earlier, one of the key determinations is, you know, market capitalization. There generally is a premium associated with the high market companies. This company was in financial distress. So there was profitability. There is profitability at these other companies. So for those financial reasons it didn't seem appropriate for me to make use of those figures.

Q. And so you did end up doing some calculations based on Farmer Brothers, right?

A. Yes. I included Farmer's. That was a negative EBITDA as of 2012. It's not in the liquor distribution, but it is a distribution company. So there were some similarities with regard to the business characteristics. So I felt it was appropriate to include that. And as I said, I think that an investor would also be interested in what the front-line managers have to say. I think they would have engaged in that same analysis. And they would have done that estimate based upon Farmers and included that in this range of potential possible values.

Q. When did the Farmer Brothers transaction close?

A. That's not a transaction. That's a trading print up. So that's based upon their trading multiple.

Q. And is there any indication that Farmer Brothers were considered to be a comparable company at the time of the transaction?

A. I don't know.

Q. So did you review the entire response that Wendy Eber gave to PBGC in which these trading comps were included?

A. You know, I have a vague recollection. I couldn't -- I know I put my eyes on it at one point. My recollection is that PBGC came up with some kind of value

of like 7 million for Eber-Connecticut. Whatever Wendy gave them, that's what they came up with.

Q. And what was your sense of what Wendy -- what objective Wendy had when she was communicating with the PBGC and providing these trading comparables?

MR. RAMSEY: Form.

A. Well, that there was -- I mean they had these liabilities. And PBGC was looking at this as the key operating company that stood behind these liabilities. And I suspect that the motivation was look, we don't have any money. We can't pay these substantial liabilities. That would be my sense. And the PBGC of course and looked at and said it's worth 7 million.

Q. Did that context cause you to be skeptical of the comparables that she was suggesting even though she is closely connected to the business?

MR. RAMSEY: Form.

A. You know, as I said, I didn't use three out of the four anyway. I thought they were inappropriate. So you know, again, there is problems with all these metrics. This was done for a particular purchase. You know, I don't think she would have provided those comparables if she thought they weren't comparable.

Q. Even she was trying to avoid paying a 5 million dollar liability?

MR. RAMSEY: Form.

A. Pardon?

Q. Do you know what position Wendy Eber took with PBGC about whether Eber-Connecticut was liable for the pension plan?

A. I don't know.

Q. Would that affect your opinion, the reliability of Farmer Brothers as a trading comp based on her selection of it?

A. I don't know why.

Q. Why didn't you look for other trading comps beyond the four that Wendy selected?

A. I did. I did look for any kind of liquor distribution company -- pure play liquor distribution company that again was similar of size or close to the size that had negative profit. And I did not find any. There are companies that engage in liquor distribution. But, for example, Constellation is one, but they also make their own liquor. So it was, you know, and they are profitable. They were profitable in 2012. I didn't find any.

Q. I want to turn your attention to Page 36 of your report. You got a summary of assets there. And you list the first one the demand note receivable from Pole-Bridge Bowman.

A. Uh-uh.
Q. How did you come up with that number? Just for the record, $350,000.
A. So that was from the 2011 tax return -- corporate rate tax return for Eber Brothers Wine and Liquor. Well, it's Eber Brothers Wine and Liquor Metro. And on Page 5 of that there is lists on Line 14 other assets $350,001.
Q. So why didn't you account for any of the accrued interest on that note?
A. Was there any?
Q. Yes. The two percent number was very small, but I don't know that it's so small as to not to show up on the thing.
A. Yeah. I don't see it.
Q. So from the tax return, it appears that the company ignored the interest on that?
MR. RAMSEY: Form.
A. I don't know. You think it would be here.
Q. If the company itself did not appear to treat the two percent interest under the note as an actual part of the note, would that further affect your willingness to reply on the Pole-Bridge Bowman transaction as a legitimate arm's-length transaction?
MR. RAMSEY: Form.

A. I don't know if it's further. I told you before that I have a problem with the transaction. I've got a problem with it -- a problem with all the transactions, but that's an issue that I have with Pole-Bridge Bowman.

Q. Prior to being engaged in this lawsuit, did you know Lester or Wendy Eber?

A. No.

Q. Had you heard of Eber Brothers?

A. No.

Q. Did you know any of the lawyers at Underberg and Kessler before this lawsuit?

A. Yes.

Q. Who did you know?

A. Paul Keneally.

Q. And you worked with him before?

A. I worked with him on a case back in the '90s. I think he was just an associate at that point. I don't think I've had another case with him since then.

Q. Is that how you met him, or did you know him separately from work?

A. No. I think that's how I met him.

Q. Did you have any interactions with Paul Keneally since then prior to this case?

MR. RAMSEY: Professional or in general?

Q. Professional or personal.
A. Rochester is a small town. So, yes. I would see him on the golf course occasionally, you know, out at dinner. Things like that -- same restaurant.
Q. And when were you engaged for this case?
A. That's a good question. I meant to look at that. I forgot. I just don't know how long it's been. Several months.
Q. Was it over a year ago?
A. I don't think so.
Q. And I understand you disclosed your hourly rates and you might not have the dollar amount right on you. Approximately, how much have you been paid so far for your work in this case?
A. I've been paid all that's been billed. But I don't know what the amount is. Like I said, I meant to look at the invoices. I haven't done so.
Q. The last time I asked this question I got $40,000 to $400,000. So could you be a little more specific?
A. I can't give you that range. I just don't know. It's not 400,000.
Q. Ballpark figure is it over $100,000?
A. No.
Q. And in terms of preparing the exhibits, was

that something that you did personally, or was that done by your assistant?

A. I haven't prepared a spreadsheet in 2015 years.

Q. Okay. So we won't blame you for the few errors.

A. No. You can blame me. I am responsible. I will take the blame.

Q. Okay. Do you know Judge Rosenbaum?

A. I don't think so.

Q. Did you know Elliot Gumaer, Mike Gumaer?

A. No.

Q. You've obviously testified a ton of times. Have you ever had your testimony excluded by a court?

A. There was a security litigation matter in which one of my opinions was excluded by Judge Rakoff in a case called Lehman Brothers. And he said that he said -- well, he said a lot of things. He said that my analysis was not reliable with regard to loss causation with regard to how analysis recommendation affects stock prices.

MR. RAMSEY: A portion of your testimony. Not the entity at of it?

THE WITNESS: Right.

Q. Any other times has your testimony been excluded?

A. Not that I can recall, no. That was the one case. And that was, I think 2008. Maybe 2009.

Q. Have you withdrawn from an engagement based upon your belief that your client or the clients in the case were misleading you?

A. Well, I've withdrawn from cases. I don't remember if it was -- I don't think it was because I felt I was being misled. It was -- the cases that I've withdrawn from are cases where as the facts become known to me, I felt that it was not something that I could -- didn't fit into the financial opinion. It was not supported. So, yes. I have a number of cases.

Q. And to be clear, you don't expect that to happen in this case because your opinions are all based on the facts as they have been presented to you, correct? You haven't attempted to engage in your own fact-finding?

MR. RAMSEY: Form.

A. That's fair. I have not.

(Whereupon, there is a short recess in the proceedings.)

Q. All right. So before we get to the exhibit. I want to ask you a little bit more about -- I am not going to make you go through the documents, the way in which the value of the Eber-Connecticut and Eber-Metro was presented to the court in 2012 in connection with the

transaction when they were trying to get it deemed commercially reasonable. In that case, one of the things they did was took the value at the date of the Pole-Bridge Bowman transaction and said that's the value of the company. And they subtracted the company's reported losses from that value to arrive at a current valuation. Were you familiar with that methodology that was put in there?

A. No, I don't remember.

Q. Does that methodology sound correct to you?

A. No.

Q. Why not?

A. Well, I mean I understand the logic, but I wouldn't do it that way. You know, as I said before, ultimately the valuation is the expected future cash flows. So if you're valuing it based upon that transaction and you think that's a reasonable transaction, what happened that ensuing years is not something I would reflect. I would take that multiple and apply it to 2012.

Q. So if the same math was done with the 2005 acquisition the Slocum taking 21.6 million and then just subtracting the losses from the next seven years, you would disagree with that valuation method?

A. Yes.

Q. But would it also be logical?
A. I understand why someone would think about doing it. If you think that multiple has bearing as of today, then you think that the growth rate implied by that multiple has equal bearing. And regardless of what it was for the last two years, you would take that multiple and apply it times to today's revenue or whatever it was. That is the general way that I think about how multiples are applied. I'm not a fan of trying to take the valuation as of that point in time and then subtract out the ensuing profits or losses. Whatever the case may be.
Q. Is that methodology something that you discussed with Wendy Eber or Lester Eber?
A. No. That's my methodology.
Q. I meant the one that was used in the court proceeding?
A. No.
Q. So you never asked why did you use that methodology?
A. No.
Q. Did you consider using that methodology here as an alternative?
A. No.
Q. Were you aware that methodology had been used?

A. I may have been. I mean I am not influenced by it.

Q. You don't remember it as you sit here today?

A. Like I said, I understand the logic behind it. But I would be hard pressed to find any authoritative book that suggests to apply that kind of methodology to do valuation.

Q. And given the credentials that Wendy Eber has, would it surprise you that she would use that method for a valuation like that?

MR. RAMSEY: Form. Go ahead.

A. Like I said, I understand the logic behind it. But if your valuation -- if you studied that stuff -- teach it, you don't do it that way. I mean, you know, I could appreciate if you pick up a Brielle Myers textbook that you may be able to rationalize using that approach. But, you know, if you study this stuff, you realize that's not what's done.

(Whereupon, Exhibit Number 131 was marked for identification at this time.)

Q. Okay. So I've got in front of you Exhibit 131, which is the December 2018 letter regarding the pension liability with respect to PBGC that you reference in your report. Do you see that?

A. Yes.

Q. Did you have any contact with the person who prepared this, Michael Gallagher?
A. I have a vague recollection of being on a conference call in which he participated in.
Q. What was discussed on the conference call?
A. What the value of the pension liability was.
Q. And there was a number of contemporaneous records indicating what it was believed to be at the time?
A. There were some calculations I think that he had done at that point in time. But it didn't provide the number of present value of these liabilities. That's my recollection.
Q. The pension liability that was listed -- that was not an amount that was due and payable at the time, right, that was a future funding obligation?
A. Yes.
Q. So in an event of a liquidation, it wouldn't be the case that PBGC would be entitled to receive that full amount that you used the 5 million dollars in such a --
A. You're asking a real question?
Q. If the amount of money is not currently due and it's essentially based on actuarially estimates and it could change wildly, why do you use a particular --
MR. RAMSEY: Form.

Q. We're almost done here. Why do you use that particular number for an insolvency analysis?

A. You've got to account for the underfunded pension liabilities. So it's the assets minus the present value of future liabilities. That's the prescription. That's what's done in valuation and exercises. You can pretty much find that in any book. And I am not doing a liquidation analysis.

Q. Right.

A. So your premise is that under liquidation the number would be different. Okay. But I am not doing a liquidation analysis. I am trying to understand what is the underfunded nature of this pension plan per actuarial analysis, and that's what this guy provided.

Q. Do you know whether that sort of analysis could be used to file a voluntary bankruptcy petition by saying that, you know, we can't fund this pension plan for the next twenty years. So therefore we're insolvent?

MR. RAMSEY: Form.

A. I don't know.

Q. This is not a liability that appears in a company's balance sheet, right?

A. Well, if it did, we could have got the balance sheet number. But this was a number that he prepared as you say 2018 to estimate what that underfunded pension

plan was.

Q. And do you know whether -- did you have anyone check the work that was done by Michael Gallagher for this? Did any of your staff?

A. I am not an actuary. None of the people I work with are actuaries. So I relied upon his calculations for that number.

Q. You said it's typically your practice not to rely on information that becomes available after the event -- after the date of valuation that you're using, correct?

A. Uh-huh.

MR. RAMSEY: Yes?

A. Yes.

Q. So is it fair to say that you it is not your typical practice to rely on a letter like this from a third party to try to calculate the value of a contingent liability from six years earlier?

MR. RAMSEY: Form.

A. No. That's incorrect. He is not using information beyond this year -- beyond 2012. So the test is is it known or knowable at that point in time. So presumably if somebody is thinking about making an investment -- under due diligence they are going to say what is the amount of underfunded pension liabilities.

Call Michael. He will tell you. So notwithstanding the information was provided to me as of 2018. The analysis itself was based upon information that was available as the 2012. So it's known or knowable as of that point of time.

Q. Again, just so the record is clear here, you're not someone who is qualified to perform this sort of actuarial analysis, correct?

A. No.

Q. And to your knowledge, Michael Gallagher is not going to be testifying as an expert alongside you, correct?

A. I have no idea.

Q. All right.

MR. RAMSEY: You didn't utilize him other than this letter?

THE WITNESS: No.

Q. Did you engage him to prepare this letter?

A. No.

Q. And do you have any way of knowing whether the numbers in this letter are accurate or reliable?

A. No.

Q. Now, you have done a lot of work relating to PBGC in the past you said, correct?

A. Yes, several cases.

Q. Have you ever seen a situation where PBGC insisted on taking a company's last assets in order to fund a pension?

A. Now, I think general rule -- I am not sure what circumstances this applies. I think their general rule is if the value of the assets is less than the liabilities that they have some kind of default of taking 30 percent of the assets.

Q. So in this case, you determined that the value of the assets was less than the liabilities, correct?

A. Yes.

Q. Did you apply any sort of discount to take into account PBGC's usual conduct?

A. No.

Q. Why not?

A. I didn't think it was appropriate. And, you know, I noted that notwithstanding they had the lien of 30 percent. There was a term that the remainder of the employee liability in the amount of at this point 4 million in accordance with their demand for payment.

Q. What are you referencing?

A. A letter dated 2016 from PBGC Eber Brothers Wine and Metro.

Q. Can you read the bates number on that just for the record?

A. EB00030922.

Q. And I am not going to make you go through the process of actually giving me your entire binder and making it an exhibit as I think I have the right to do. Instead I am going to ask you, what is in that binder?

A. As you note in my report, I cite many, many things. Notwithstanding the 30 percent control premium question. There is lot of footnotes that cite to a lot of documents. Some internal documents, some papers, some books. So what my people do as a regular matter is they put all the citations, the back-up citations behind each page in my report based upon those footnotes. So for Page 11 there is a bunch of things that I reference.

Q. That's what has been -- I haven't noted it every time, but just for the record, that has been referenced a few times during this deposition.

MR. RAMSEY: Fair enough.

MR. BROOK: I think that is all I've got.

COURT REPORTER: Who wants a transcript? Are you each paying for your own?

MR. RAMSEY: Yes.

MR. BROOK: Yes.

(Whereupon the deposition concluded at 3:32 p.m.)

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STATE OF NEW YORK
COUNTY OF MONROE

I, Leah Didsbury, a Notary Public in and for the State of New York, do hereby certify:

That the witness whose testimony appears herein before was, before the commencement of his testimony, duly sworn to testify the truth, the whole truth and nothing but the truth; that such testimony was taken pursuant to notice at the time and place herein set forth; that said testimony was taken down in shorthand by me and thereafter under my supervision transcribed into the English language, and I hereby certify the foregoing testimony is a full, true and correct transcription of the shorthand notes so taken.

I further certify that I am neither counsel for nor related to any parties to said action, nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 6th day of September 2019.

Leah Didsbury

Leah Didsbury

A C K N O W L E D G E M E N T

I, FRANK TORCHIO, certify that I have read the transcript of my testimony taken under oath on AUGUST 23, 2019, and that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

____

FRANK TORCHIO

Signed and subscribed to
before me, this _____ day
of __________________, 201_.
____
Notary Public

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NAME OF CASE: Kleeberg, et al. v. Eber, et al.

NAME OF DEPONENT: FRANK TORCHIO

DATE OF DEPOSITION: 8/23/2019

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FRANK TORCHIO

SUBSCRIBED AND SWORN TO BEFORE ME

THIS___DAY OF _____________, 20__.

________________________ ________________________

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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